# INTRODUCTION

642 178 IN the autumn of 1918 the Empire of the Habsburgs collapsed; and when the Czechs, the Poles, the Southern Slavs, and the Hungarians had broken away and formed independent States, the German Provinces of the old Reich, containing some seven million out of the fifty million of the Habsburg peoples, were left alone to face an uncertain future.

The Christian Socialists of the Provinces[1] and the Social Democrats of Vienna and the industrial districts, differing in almost every other respect, were united at that time in their desire to join the German Reich, and in their intention of instituting some form of democratic government.

Frustrated by the Allies in their first objective they proceeded, with the blessing of the civilized world, to draw up with meticulous care a pronouncedly democratic constitution, which should ensure for all time government of the people, for the people, by the people. From the Cardinal Archbishop to the editor of the *Arbeiter Zeitung* there was scarcely a dissentient voice. All were agreed that from henceforward the people themselves must be the arbiters of their own fate.

The friends and enemies of Austria were equally unanimous in their approval of parliamentary democracy as a form of government. The Czechs, the Yugoslavs, and the Hungarians, in so far as they had time for consideration of Austrian affairs at all, were profoundly thankful to see the disappearance of the last remains of the old authoritarian structure of the State, for, with this destroyed, the dreaded return of the Habsburg must remain a remote contingency.

The Allies, and especially President Wilson, viewed with gratified approval the ideological change of heart evinced by their late foes. The war had been fought and won in the name of democracy, and it was consoling to see that even the ex-enemy States had come to appreciate the ideals for which so many millions of lives had been sacrificed.

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[1] Throughout this study the term 'Land' will be translated as 'Province'. In fact, however, the Austrian *Ländern* were rather more important units than the term 'province' would indicate.

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178 Finally, the Germans of the Reich, the closest friends, if not blood-brothers, of the Austrians, were themselves no less determined that they too would henceforward live under a democratic form of government.

Yet in spite of this apparently auspicious beginning, Austrian politics since 1927, and perhaps even before this, moved steadily in an anti-democratic direction. By 1929 the tide had finally turned, and at last, in February 1934, democracy in Austria was overthrown.

It is not easy to assign its just significance to each of the contributory causes of this *volte-face*, for they were many and various. The following study can only be regarded as a preliminary attempt to consider some of the most important. It can make no pretence to being an exhaustive treatment of what is a very large and complex question.

## II

## PRELIMINARY DISCUSSIONS ON THE FORM OF THE NEW CONSTITUTION

THE break-up of the Empire necessitated a radical alteration of the pre-war Austrian constitution, the pivot of which had been the Imperial House. The chief object of Habsburg policy had been to manipulate the rival national and social forces within the State in order to ensure the predominance of Imperial influence. Therefore, with the collapse of the Monarchy and the falling away of the non-German elements, German Austria was confronted with the task of building up a new national State, which was necessarily different, in both its forms and its aims, from that which had preceded it. 642

Because of the general feeling that the reintroduction of any form of autocratic government, however convenient this might be in a period of emergency, must be avoided at all costs, the governmental devices made use of by the German Austrians from October 1918 to the promulgation of the constitution of October 1920[1] were marked by a desire to safeguard the position of the National Assembly as the supreme legislative organ.[2] All parties were agreed, though their fervour varied, that the new State must be a democratic one. 642 646

The stress on the importance of the Lower House was also partly a consequence of the political philosophy of the Social Democrats, whose views were then in the ascendant. This party laid great emphasis on the necessity for concentrating power in one democratically elected Chamber, and viewed with suspicion attempts on the part of that Chamber to delegate any considerable part of its authority to bodies not directly

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[1] For an analysis of the Constitutions of 30 October and 19 December 1918 and 14 March 1919, see Kelsen, '*Die Verfassung Deutschösterreichs*', *Jahrbuch des öffentlichen Rechts* (Tübingen), vol. ix, pp. 245–91.

[2] Kelsen, *Die Verfassungsgesetze der Republik Österreich* (Wien, 1919).

642 646 elected by the people.[1] The party therefore regarded with disfavour any of the customary devices designed to check the Chamber, such as a strong Government, a strong President, or a second Chamber. Social Democrats were equally anxious to vindicate the independence of the Chamber as against the people. Hence, they regarded such devices as the Referendum and the Initiative with suspicion. For this reason, also, they were in favour of the introduction of proportional representation with the closed list system, as they believed that these would free the members of the Chamber from any kind of dependence on their constituents. This, they hoped, would avert both the corruption of local politics and the predominance of the provincial outlook in the National Assembly, which they feared would result if this became the catspaw of local groups.[2]

These views can be clearly traced in the constitutional experiments of the first two years of the Republic. For instance, the Council of State was chosen by the National Assembly on the basis of proportional representation. The Government was thus recruited not from the ranks of one party, but from the whole body of representatives.[3] This body was, however, intended to be in all respects subordinate to the National Assembly. The three Presidents of the Council, who had equal powers, were chosen by each of the three big parties, the Christian Socialists, the Social Democrats, and the German Nationalists.[4] The elections to the Constituent Assembly in February 1919 were based on proportional representation, instead of the old majority voting arrangement.

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[1] For instance, the Executive Committee, or Council of State elected by the National Assembly and entrusted by it, on 30 October, with the task of carrying on the government of the country, was deliberately made subordinate to the National Assembly, of which it was constituted the executive committee. The Council of State was, however, later given a right of suspensive veto on proposals put forward by the National Assembly. Law of 19 December 1918. St. G. Bl. Nr. 139, Article 4. Law of 14 March 1919, St. G. Bl. Nr. 179, Article 5.

[2] Renner, speech to Provincial National Assembly, 18 December 1918.

[3] 30 October 1918, St. G. Bl. Nr. 1, Article 4.

[4] Hauser, Seitz, and Dinghofer were elected by the Christian Socialists, the Social Democrats, and the German Nationalists respectively on 21 October 1918. Each held in rotating weeks the offices of President of the National Assembly, the Council of State, and what may be termed the Cabinet.

But, while Social Democrat ideas regarding the establishment of a strong unitary State in which power would be as far as possible concentrated in a single democratically elected Chamber, came to prevail in the capital, the situation in the Provinces was developing along quite different lines. New Provincial Assemblies, which had been set up in place of the old *Landtags*, had come to regard themselves as quasi-independent legislative bodies. And the central Government, still uncertain of itself, pursued a somewhat vacillating policy with regard to them.[1] For instance, although no provision was made for the participation of the Provinces as such in legislation in the Provisional Constitution of 30 October 1918,[2] and although on 14 November the State formally took over control in the Provinces,[3] the Executive Committee had, on 29 October, sent a mandate to all the Provincial Assemblies,[4] asking them to draw up provisional constitutions containing declarations of accession to the Republic. This mandate was really, as Kelsen remarked, the *reductio ad absurdum* of the extreme federalist view.[5] Some of the Provinces took no notice of it.[6] Others merely made declarations of accession.[7] None the less, a decree of 12 November took notice of the "solemn declarations of accession of the Provinces and districts of the State territory".[8]

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[1] Kelsen, 'Die Verfassung Deutschösterreichs', *Jahrbuch des öffentlichen Rechts*, vol. ix. p. 25: 'In den Ländern glaubte man vielfach, ein von der Zentralregierung gänzlich unabhängiges Gesetzgebungsrecht zu haben, u. auch der Staatsrat schien kein eigentliches Sanktionsrecht den Landesgesetzebeschlüssen gegenüber in Anspruch nehmen zu wollen.'

[2] Staats Gesetz Blatt. Nr. 1, Article 2. 'Die gesetzgebende Gewalt wird von der provisorischen Nationalversammlung selbst ausgeübt.'

[3] St. G. Bl. Nr. 124.

[4] The position of these Assemblies was a somewhat anomalous one, for they were not, strictly speaking, democratic bodies, as they had been elected on the old Curia system. (See Austria-Hungary Handbooks prepared under the direction of the Historical Section at the Foreign Office, No. 1, pp. 9 and 11.)

[5] 'Die Länder sollten durch diese Erklärung einem Staate erst beitreten . . . obgleich er schon vor dieser Beitrittserklärung bereits als constituiert angesehen werden musste. Vom Standpunkt des Verfassungsbeschlusses vom 30 October, u. des Landesgesetzes vom 14 November waren diese Beitrittserklärungen nicht bloss verfassungswidrig sondern geradezu sinnlos.' *Jahrbuch des öffentlichen Rechts*, vol. ix, p. 259.

[6] Lower Austria, Tyrol.

[7] Upper Austria, Vorarlberg.

[8] St. G. Bl. Nr. 23.

642 631 And on 14 November a law was passed providing for the election by local assemblies of a *Landeshauptmann* or Governor and subordinates, who were to take over all the business formerly transacted by the State officials and the Statthalter, appointed by the Emperor.[1] This meant, in effect, the abolition of the dual system, and a large measure of decentralization in administrative matters.[2]

The position as regards the relationship between the State and the Provinces throughout the first two years of the Republic was, therefore, somewhat obscure; and this state of affairs not unnaturally resulted in the strengthening of separatist feeling. Traces of this may be seen in the provisions drawn up regarding provincial legislation on 14 March 1919.[3] It was then laid down that laws passed by Provincial Assemblies required counter-signature by a Secretary of State or the Chancellor. But even if assent was refused the Provincial Assembly could, if it wished, then reintroduce and pass the bill. If, however, provincial legislation required the co-operation of the State for its implementation, the Government, acting as a whole, could refuse assent. The Government thus had a suspensive, but not an absolute veto over provincial legislation.

631 665 The different ~~opinions~~ which, ~~as~~ has been pointed out, prevailed in Vienna, where the Social Democrats were in power, and the Provinces, which were for the most part Christian Socialist strongholds, came to the fore strongly at the various conferences held regarding the form of the final constitution.[4]

The main demand of the Christian Socialist party, after the withdrawal of the Emperor, was that German Austria must be a federal State, in which the member States would have relatively far-reaching rights of self-government.[5] The reasons adduced by the party in support of its federalist programme

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[1] St. G. Bl. Nr. 24.

[2] Eisenmann, *La Constitution Fédérale de la Republique d'Autriche* (Paris, 1924), pp. 37–8.

[3] St. G. Bl. Nr. 179.

[4] See Appendix A.

[5] The views of the more extreme federalists, such as Dr. Ender, amounted in fact to a claim that Austria should become a federation of independent States.

# III

# THE CONSTITUTION OF 1920

THE constitution, which was finally promulgated on 5 October 1920, represented in the main a compromise between the views of the Christian Socialists and the Social Democrats.

## (i) *The Democratic Principle*

All parties were agreed that the new constitution must be a democratic one. It was therefore laid down in the first Article that "Austria is a democratic Republic. Her laws are made by the people."[1] A great effort was made to secure effectively, by careful legislation, the democratization of the whole machinery of government. It is only necessary, for instance, to refer to the detailed provisions made by Articles 95 and 115–20 to ensure the democratization of the machinery of government in the Provinces. In the case of these Articles, zeal for the triumph of the democratic principle overcame objections to provisions which constituted a striking encroachment on provincial rights.

Again, the importance attached by the framers of the constitution to the firm establishment of the democratic principle is shown by the provisions dealing with the organization of the

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[1] Dr. Kelsen points out that this statement is without much legal significance. 'Ob Österreich eine demokratische Republik sei oder nicht, das zu beurteilen ist auschliesslich u. allein Sache der Rechtserkenntnis, nicht des Rechtes; dessen Sache ist es eine demokratische Republik zu sein oder nicht zu sein.' And the second part of the article is misleading in so far as it implies that direct government by the people is the normal method of legislative procedure. Actually, direct government can only be used under exceptional circumstances (vide Articles 41–6 of the Constitution). (*Jahrbuch des öffentlichen Rechts*, 1922, vol. xi, p. 238.) These statements may be compared with, for instance, the first clause of Article 87, 'Die Richter sind in Ausübung ihres richterlichen Amtes unabhängig', and with the first clause of Article 91, 'Das Volk hat an der Rechtsprechung mitzuwirken', neither of which statements has in itself any legal significance.

641 suffrage. In 1907 the suffrage had been extended for State 642 elections so that all males over twenty-four years of age had an active vote, and all males over twenty-nine had a passive one. These age limits were now reduced to twenty and twenty-four years respectively; and the right to vote was extended to women.

Whereas in pre-war days no attempt had been made to regulate the suffrage in those Provinces where the old curial system, abolished for Reichstag elections in 1907, had persisted up to the war, it was now expressly laid down that the right to vote in provincial elections might never be more restricted than it was for elections to the National Council.[1] This provision is another example of a striking incursion on provincial rights in the interests of democracy.

By Article 26, (5), it was laid down that the right to elect to the National Council could only be suspended by judicial decree,[2] and that it was intended that this right should only be withdrawn for reasons of the utmost gravity is suggested by Article 142, (3), which decrees that even in the case of an adverse judgement by the Constitutional Court in a case of impeachment of an official, a temporary loss of political rights should only follow if the case were one of particularly grave circumstances. And by Article 149, (2), Article 20 of the Fundamental Law of 21 December 1867 and the Law of 5 May 1869, dealing with temporary suspension of these rights, were both expressly repealed.

641 It was felt, however, that the establishment and safeguarding 666 of universal suffrage was not in itself sufficient to ensure the 642 triumph of the democratic principle. Before the war, for instance, although a comparatively wide, direct and secret suffrage had been in force, the equality of the suffrage had

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[1] Vide Article 95, (2).

[2] By this Article, the arrangement by which women under the surveillance of the police were deprived of the right to vote (Law of 18 December 1918, 139) was abrogated. Verdier suggests that Dr. Kelsen felt that no one should be subjected to the loss of so fundamental a right, 'par une simple décision administrative qui risque souvent, et en particulier lorsqu'elle est prise par la police, d'être arbitraire'. (Verdier, *La Constitution fédérale de la Republique d'Autriche*, Paris, 1924, p. 115.)

been to a large extent illusory, because of the inequality in 641
apportionment of mandates to the constituencies, which 666
differed greatly in size. The introduction of proportional 642
representation had to some extent removed these inequalities. And by a Law of 18 December 1918 mandates were redistributed over the constituencies. The new allocation was calculated on the basis of the census published in 1910. But Verdier points out that the constituencies still received mandates only in rough approximation to the number of their inhabitants.[1] And Kelsen himself admits that the weight of the individual vote varied not a little in the different constituencies.[2] However, it was considered useless to reapportion mandates until the boundaries of the State had been finally settled by the Treaty of St. Germain.[3] Meantime, the inequality of the existing arrangement had been increased by subsequent movements of population. However, by Article 26, (2), of the 1920 constitution, the principle of the apportionment of mandates to the constituencies on a basis strictly proportional to their populations was established. And the Electoral Law of 11 July 1923 laid down the method to be used for ascertaining the correct apportionment.[4]

It was felt by many, however, that the division of the electorate into constituencies in itself constituted a violation of the democratic principle, in that such a division resulted in a curtailment of the freedom of members, who then tended to act as the delegates of their constituents rather than as free representatives of the whole people. Renner, in particular, emphasized the dangers of this system. He feared that the politics of the State might come to turn upon local issues, while what should have been the essential questions, the different views of the various parties, would fade into the

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[1] Verdier calculates that in Salzburg 18,116 persons were represented by one deputy, while in south-west Vienna 28,332 persons had only one deputy (ibid., p. 116).

[2] *Die Verfassungsgesetze der Republik Österreich*, vol. ii, p. 7.

[3] Verdier, op. cit., pp. 116–17

[4] It is probable that the inequalities of the previous system were somewhat exaggerated, as when fresh elections were held on 21 October 1923, in accordance with the new census of March and the Electoral Law of July, only slight alterations were found to be necessary.

641 background.[1] He further pointed out that such a state of
666 affairs would tend to produce a deadlock in the National
642 Council, for as members would be bound by the local views of their constituents, they would be unable to negotiate the necessary compromises with their colleagues. Moreover, the candidate prepared to offer the most bribes to his constituents was likely to be elected.[2]

666 It is clearly undeniable that the division of a country into
642 constituencies must, in so far as it has any political consequence at all, tend to tip the balance of a constitution in favour of direct democracy, by encouraging control of particular members by particular territorial groups. It is, therefore, not surprising that the constituency system met with opposition, particularly from the Social Democrats, for the tendency of left-wing political theorists at that time was to revert to the nineteenth-century idea of the omnipotence of Parliament and its freedom from the electorate once it had been elected.

The constitution of 1920, in this, as in so many other instances, represented a compromise. By Article 56, for instance, it was expressly laid down that members of the National Council and the Federal Council should not be bound by instructions. But the constituency system was maintained. On the other hand, the closed list system was introduced, thus lessening the direct connection between members and their constituents.[3] And for the majority system there was substi-

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[1] Speech by Renner in the Provisional National Assembly on the occasion of the introduction of the Electoral Law of 18 December 1918. 'Die Wahlkreiseinteilung gab der Landverteilung ein imperatives Mandat, u. stellte sie unter die Peitsche einer rücksichtslosen Agitation, die ihnen jede Freiheit der Entschliessung nahm . . . Dass wir bisher nicht jene grosse Parteiformation nach allgemeinen Weltanschauungen herausbilden konnten wie in anderen Ländern, geht zum guten Teil auf diese mechanische Spaltung der Wählerschaft zurück.' (Quoted by Kelsen, op. cit., vol. ii, p. 43.)

[2] In fact, however, Renner's fears proved to be groundless. The difficulty lay rather in the fact that the connection between electors and their representatives was so remote that the former could not exercise any control at all.

[3] In point of fact, the closed list system, in that it inevitably tended to make members dependent on their party caucuses, was just as liable to lead to a diminution in the authority of Parliament through the subordination of its members to extra-parliamentary groups, as was the constituency system.

This device was criticized as unsatisfactory by Adamovich (*Grundriss des österreichischen Staatsrechts*, Vienna, 1927, p. 136). In May 1927 a ministuted a far-reaching system of proportional representation which, by its provision for combinations of minorities in the various constituencies, meant that a given proportion of members of the National Council was not responsible to particular territorial groups. It was hoped that by this means the advantages of the constituency system could be maintained without what was felt to be its disadvantage—unrepresented minorities in all the constituencies.

The Austrian constitution of 1920 was riddled with provisions for the representation of minorities. No man should, it was felt, be faced with the alternative of voting for parties with whose policy he was not in complete agreement or of wasting his vote. But in fact this attempt to obviate the necessity for compromise, which is the kernel of the theory of proportional representation, cannot solve the problem, as was shown only too clearly by the later course of events in Austria. The need for compromise in a positive State composed of divergent elements cannot be evaded. The advocates of proportional representation merely shift the responsibility for the compromise from the elector to his representative. For, in a Parliament or any other body fully representative of public opinion (which will be, as a rule, a body composed of small groups), bargaining among the parties must always be necessary before a governmental majority can be formed at all. It may well be argued that the majority system, which leaves the business of compromising to the elector himself, is the more democratic of the two methods.

However, the principle of proportional representation came to be regarded at that time by almost all Austrians as the safeguard *par excellence* for democratic government.[1] Thus,

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terial declaration incorporated a scheme to give the voter more control over the nomination of candidates. The idea was again discussed at the time of the 1929 reforms, and was brought up whenever the question of a possible reform of Parliament arose.

[1] Speech by Renner in the Provisional National Assembly, on 18 December 1918 (Kelsen, op. cit., vol. ii, p. 45). The Austrian system may be compared with the automatic quota system of the German constitution. The German method has the advantage of simplicity. It also provides a stimulus to vote, since for every additional 60,000 votes a further mandate is allotted.

666 although in the Electoral Law of 18 December 1918 no 642 provisions were made for the combination of minorities in the various constituencies—provision having been made, on the contrary, for amalgamations of parties[1]—the Law of July 1920 provided that fifteen mandates should be apportioned to those parties which had unused votes in the various constituencies. No party could, however, obtain more mandates on the second count than it had already obtained on the first.[2]

The principle of proportional representation was, however, by no means restricted in its application to the apportionment of mandates and elections to the National Council. A modified system of proportional representation was, for instance, laid down for elections to the Federal Council.[3] And by Article 55 it was decreed that elections to the Chief Committee, the most important organ of the National Council, were to be on a proportional representation basis. Article 95 decreed that members of the Provincial Councils should be elected on a proportional representation basis. Article 119, (2), decreed that proportional representation should be used for elections to municipal councils. Article 119, (4), went so far as to arrange

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[1] St. G. Bl. Nr. 115, Article 33. But Kelsen points out that 'Diese Einrichtung hatte schon bei der Beratung der Wahlordnung zur konstituierenden Nationalversammlung viele entschiedene Gegner gefunden u. haben nunmehr alle grossen Parteien dagegen Stellung genommen'. (Kelsen, op. cit, vol. iv, p. 134.)

[2] This restriction was largely abrogated by the Electoral Law of 11 July 1923, in which it was laid down that a party might obtain any number of seats on the second count provided that it had obtained at least one on the first. This Law, however, established four big constituencies for the second count—another instance of the tendency of Austrian constitutionalists to give with one hand while taking away with the other.

That the objections raised to the 1920 arrangement were not merely theoretical is shown by the election results of 1923 and 1930. On both these occasions the German Nationalists gained more seats by the second count than they had already obtained on the first. In 1923 they gained three by the first and seven by the second; in 1930 two by the first and five by the second. (Zurcher, A. J., *The Experiment with Democracy in Central Europe*, Oxford University Press, 1933, p. 82. He quotes figures taken from the *Statistisches Handbuch für die Republik Österreich*, 1923 and 1930.)

vi [3] The modifications introduced by Article 34, (3), and Article 35, (1), were occasioned in the one case in deference to Christian Socialist federalist views, and in the other by the fear of the Social Democra that they would remained unrepresented in the more predominantly conservative of the Provinces. Cf. with Weimar Constitution, Article 61.

2: MacDonald S-4 (no date) 1946 EK1 Austria EK1

that if municipal councils chose to elect special administrative 666
committees, such committees must be elected on a proportional 642
representation basis.[1]

Direct government by the people was provided for in the 646
Austrian constitution.[2] It was not, however, intended that 642
frequent use should be made of these provisions. Article 24, for instance, enumerating the various legislative organs of the State, makes no mention of direct legislation by the Initiative and the Referendum. Article 41, (2), provides that every proposal signed by two hundred thousand qualified voters, or by half of the qualified voters in each of three Provinces, must be submitted by the Federal Government to the National Council. It may be observed, however, that the quorum of petitioners is, relatively speaking, a very high one.[3] And it was unlikely that the second of the two conditions would ever be fulfilled, in view of the fact that co-operation between the various Provinces was, as in pre-war days, discouraged.[4]

The Referendum could only be set in motion by the National Council itself.[5]

Only in the case foreseen in Article 44, (2) (a complete revision of the constitution), was a Referendum compulsory; and even in this case the effect of the article seems problematical, since no definition of "complete revision" is provided.

Of the Provinces, only Salzburg, Tyrol, and Vorarlberg included provisions for direct democracy in their constitutions.

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[1] Verdier, op. cit., p. 189. It may be noted also that when, in accordance with the Geneva Protocol of 4 October 1922, it became necessary to set up a Council of State endowed with special powers, the third protocol, dealing with this, set up a body composed of the Government and twenty-six councillors who were to be elected on a proportional representation basis.

[2] The provisions were, however, somewhat half-hearted. Most of the Social Democrats did not approve of proportional representation, fearing that it might undermine the supremacy of Parliament. The Christian Socialists, who had at first supported it warmly because of their control over the Provinces, became doubtful in proportion as the question of the proposed administrative reform, which they felt would weaken their hold on the Provinces, became actual.

[3] In Switzerland, for instance, only thirty thousand votes are needed. Swiss Constitution, Article 89.

[4] Cf. Law of 1860 with Article 107, 1920.

[5] Article 43.

## (ii) *The Federal Principle*

631 642 The same criticism may be applied to Article 2 ("Austria is a Federal State") as was applied to Article 1—namely, that it is a judgement rather than a law. Whether or ~~not~~ Austria was a federal State necessarily depended upon subsequent provisions in the constitution. Moreover, as Adamovich points out, the term 'federal State' is susceptible of a variety of interpretations. Kelsen, however, considered that the constitution of October 1920 could be accepted as a *bona fide* federal constitution since it provided for an organ whereby the Provinces could take part in the legislative and administrative work of the State. It differed, he thought, in this respect, from pre-war constitutions, although these had contained, in many cases, provisions of a federal nature.

But it is clear that Austria was not a federal State in the sense that there was any question of sovereignty being divided between the State and the Provinces. It was not laid down in so many words that State law takes precedence over provincial law. But the absence of this statement—probably out of deference to the prevalent federalist views—did not mean so much an accretion of strength to the Provinces as an accumulation of work for the Constitutional Court.

647 642 In considering how far the federal principle was incorporated in the 1920 constitution it may be convenient to deal first with the extent to which the Provinces participated in federal legislation, since this participation constitutes, as Kelsen points out, the essence of a federal system.

By the 1920 constitution a federal organ, the Federal Council, was set up. The Federal Council was composed of members elected by the Provincial Councils.[1] The Provincial Councils did not, however, return an equal number of members.[2] Again, the provision that the representatives

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[1] Article 35.

[2] Article 34. In this respect a compromise was reached between the more extreme of the Christian Socialists who considered that the Provinces, which varied greatly in size, should none the less, as equal sovereign bodies, return an equal number of representatives, and the Social Democrats who wished representation to be on a basis strictly proportional to the population.

elected need not be members of the Provincial Councils, 647
although they should be eligible for such membership, suggests 642
that it was not intended that the Federal Council members should be directly representative of the Provincial Councils.[1] Further, proportional representation was introduced in order to secure representation for the largest of the minority parties in all the Provinces.[2]

The Provinces could not therefore be represented in the Federal Council, as they were in the American Upper House, by corporate bodies of voters. Indeed, the provisions of Article 56, by which it was decreed that members should not be bound by instructions from any outside body, were expressly made to apply also to members of the Federal Council.[3] And these Articles, apart from the fact that they made impossible a strict representation of provincial interests, also constituted a very considerable interference by the State on what might well have been regarded as purely provincial matters.

The influence of the Federal Council on federal legislation was a limited one. It could submit bills to the National Council through the Federal Government,[4] and with certain important exceptions, as, for instance, measures dealing with financial matters, it had a right of suspensive veto. Bills thus vetoed could, however, be repassed by the National Council by a special majority.

It may be said, therefore, that the Federal Council was not organized on a strictly federal basis, and that its powers, as compared with those of the National Council, were extremely limited.

Those legislative powers not specifically enumerated as 642
belonging to the State, were left to the Provinces.[5] Actually 635

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[1] Article 35, (2).

[2] Article 35, (1), inserted at the instigation of the Social Democrats.

[3] Kelsen comments on this: 'Dass die Mitglieder des Bundesrates nicht an die Aufträge des Landtags gebunden sind, der sie entsendet, ist jedoch darum besonders bemerkenswert, weil es sich beim Bundesrat doch offenbar um eine Vertretung der Länderinteressen handelt. . . . Die Mitglieder des Bundesrates sind daher ebensowenig Vertreter des Landtages oder eines Landes, wie die Mitglieder des Nationalrates Vertreter des Bundesvolkes oder einzelner Wählergruppen sind.' (Op. cit., vol. v, p. 145.)

[4] Article 41, (1).

[5] Article 15, (1).

642 however, the enumeration of powers belonging to the State
635 covered a very wide range of subjects.

By Article 12 the Provinces had the right to provide supplementary legislation to general laws laid down by the State. If, however, the Provinces did not enact the necessary supplementary legislation within a given period of time, the State could pass the necessary legislation itself.[1] All provincial legislation required the sanction of the Government. Sanction could be refused on the grounds that the law in question endangered federal interests, and the provincial law could only be re-enacted with a special majority.[2] Even then, the case could be brought before the Constitutional Court by the Federal Government, on the grounds that the law in question was unconstitutional.[3] The consent of the State was necessary for any legislation requiring its co-operation.[4]

The legislative rights of the Provinces were therefore not extensive.

They were, however, far more richly endowed with administrative rights.[5] These were of two kinds: (*a*) direct administrative rights—i.e. in connection with administration dealing with exclusively provincial matters; (*b*) indirect administrative rights, i.e. administration in connection with federal legislation. It may be noted, however, that, even in connection with direct administrative rights, the State had a certain right to intervene. A Federal Minister could, for instance, challenge a provincial administrative act before the Administrative Court, on the grounds that the interests of the State had been injured thereby.[1] And any person could challenge any administrative act by bringing it before the Administrative Court, on the ground that it was *ultra vires.*

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[1] Article 15, (2).

[2] Article 98, (2).

[3] But the Provinces could also challenge State laws on the ground of their unconstitutionality. Article 140, (1).

[4] Article 97, (2).

[5] The fourth section of the constitution, Articles 95–120, dealing with legislative and executive administration in the Provinces, required, however, to be implemented by three more laws before it could come into effect. The first of these, governing the financial relationship between the State and the Provinces, was passed on 3 March 1922 (B. G. Bl. Nr. 124). The second and third, dealing with administrative reform in the Provinces and with education, were never passed. Administrative power was divided between the State and the Provinces on the lines laid down by the Law of February 1861; legislative power was divided in accordance with the Law of 1867 (Articles 11 and 12); and educational facilities were provided in accordance with the Law of 1868. This delay was unfortunate in that it served to increase the already existing friction between the State and the Provinces by perpetuating uncertainty in their relationships; and legislation passed in the eighteen-sixties, the heyday of *laissez-faire* liberalism, could not meet adequately the needs of the new Austria. For instance, section 11 of the Law of 1867, enumerating matters to be dealt with by the State legislation, omits all reference to economic and social matters. Moreover, inadequate legislation could not, as it had been in the pre-war period, be implemented by Imperial ordinances.

As regards provincial administration which supplemented federal legislation, the control of the State was considerable. And although it was intended to abolish as far as possible the old system of dual administration in the Provinces by using provincial officials for federal administration, it was expressly provided that, if the Provinces failed to implement federal legislation within a given length of time, the State might delegate the necessary administrative powers to its own officials. If supplementary administrative regulations were necessary in more than one Province, and the Provinces concerned could not reach an agreement, federal officials could be put in. Moreover, the Governor, the chief administrative official in the Provinces, although elected by the various Provincial Councils, was sworn in by the President.[2] And when local officials acted for the Federal Government they became, *ipso facto*, federal officials. Thus, the right of appeal against

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[1] This was a new provision. In the old Austrian constitution only private persons could appeal against a decision before the Administrative Court. And this provision was the more important in view of the wide powers with which the Administrative Court was endowed. By Article 133, (3), for instance, it was empowered to decide cases on their merits, apart from legal considerations. This was a new departure, although Article 133, (1) and (2), had been taken over from the Laws of 1875. Kelsen comments as follows upon this Article: 'Die Möglichkeit einer Reformation von Verwaltungsakten durch den zentralen Verwaltungsgerichtshof ist um so bedeutungsvoller, wenn man berücksichtigt, dass es sich dabei auch um Verwaltungsakte handelt, die im selbständigen Wirkungsbereich des Landes gesetzt werden, u. dass deren Reformation durch ein Bundesgericht erfolgt.' (Kelsen, *Jahrbuch des öffentlichen Rechts*, vol. xi, p. 263.) On the other hand, the Provinces had indirect control over the appointment of half the members of the Administrative Court (Article 135).

[2] Article 101, (4).

● 642 635 their actions lay through the central authorities and not through the Provincial Assemblies.

It may, therefore, be said that, although the Provinces were endowed with comparatively far-reaching administrative rights and duties, the State had extensive supervisory rights.

642 635 692 As regards judicial rights, Article 82 enunciates the principle that "The whole judicial system lies within the competence of the State".[1] It may, however, be noted that, although the Provinces had no influence over the election of the judges of the ordinary Courts, who were appointed on the advice of the Senates by the Federal Ministry and the President,[2] they had some control over appointments to the Administrative and Constitutional Courts. For instance, by Article 135, the nominations of the Federal Government for the posts of Vice-president, and half the members of the Administrative Court, required the assent of the Federal Council. Article 147 laid down somewhat similar provisions for appointments to the Constitutional Court.[3] But this case differed from the former in that the Federal Council had no influence over the appointment of the Vice-president.

It is clear, however, that the share of the Provinces in the working of the judiciary was even smaller than their share in legislation and administration.

42 635 But, while there can be no doubt that the substance of power lay with the State, lip-service was certainly freely paid to the federal idea. The outstanding example of this is Article 2, (1),[4] to which reference has already been made. Another example may be taken from Article 2, (2), where reference is made to the 'independence' of the Provinces. But, as Kelsen points out, this word has no exact legal meaning.[5] Article 15, (1), refers to cases not expressly made over to the State, as remaining within

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[1] Kelsen comments on this: 'Dass die gesamte Gerichtsbarkeit dem Bund vorbehalten ist, bedeutet einen, für einen Bundesstaat ungewöhnlichen Grad von Zentralisation.' (Op. cit., vol. v, p. 176.)

[2] Article 86, (1).

[3] In this case, however, the Federal Council was responsible for the actual appointments. It did not merely give its assent to proposals of the Government.

[4] 'Österreich ist ein Bundesstaat.'

[5] Op. cit., vol. v, pp. 66–7.

the sphere of provincial autonomy.[1] But, as the Federal State 642
had in fact evolved from a unitary State, the word 'remain' 635
is meaningless.

By Article 26, (2), it was laid down that the country should 642
be divided up into constituencies within the various Provinces. 635
Apart, however, from the fact that this constituted a recogni- 646
tion of the federal ideal, it is difficult to see that the Provinces derived any particular benefit from this arrangement. Article 36, providing for strict rotation among the Provinces in the office of President of the Federal Council, is of a similar character.

Article 24 announces that legislation shall be by the National Council, together with the Federal Council elected by the Provincial Councils. But in fact, as has been pointed out, the legislative power of the Federal Council was very slight indeed. The Federal Council had, for instance, no share in the appointing of the Government;[2] and it could not even set up special committees of investigation.[3]

Again, by the terms of Article 52, the Federal Council could, as the National Council, inquire into the conduct of the Government. It might be supposed that the corollary of this Article would be that, if the conduct of the Government was found to be unsatisfactory, the Federal Council could take some steps towards its removal. This, however, was not the case.[4]

There were, it is true, certain things which could not be done without the consent of the Federal Council. By Article 3, (2), for instance, it was decreed that no alterations could be made in the boundaries of the Provinces (except as provided by the Peace Treaties), except by agreement of all the Provinces concerned.[5] By Article 35, (4), it was decreed that no alteration

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[1] 'Verbleibt sie im selbständigen Wirkungsbereich der Länder.' This terminology may be compared with that of the previous draft of this article, 'Die Länder . . . übertragen dem Bund', etc. The implication of these phrases is that the Provinces were originally sovereign bodies. This was certainly not the case. (Kelsen, op. cit., vol. v, p. 80.)

[2] Article 70.

[3] Article 53, (1).

[4] Article 74, (1).

[5] Cf. Weimar Constitution, Article 18, which empowers the State, in certain circumstances, to alter boundaries without the consent of the Provinces concerned.

642 should be made in the constitution of the Federal Council
635 without its assent. And assent required a majority vote in
646 favour from the representatives of at least four Provinces. A
minority of the Provinces could thus prevent an amendment.[1]

[692] Finally, by Article 132, if a Province were involved in a dispute before the Administrative Court, the case had, as a rule, to be tried by a Senate having among its members a judge who formerly belonged to the judicial or administrative service of that Province.[2]

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635 But although certain actions could not be carried through without the consent of the Provinces, effective precautions were taken to ensure that the Provinces should never become overpowerful.

Articles 95–120, for instance, gave the State control over the political and social structure of the Provinces. The provisions ensuring democratic government, safeguarding minority rights, and guaranteeing to the State extensive supervisory rights, guarded against the possibility of the growth of a strong, united opposition to the central Government from reactionary parties in the Provinces. The extent to which State control over the Provinces went may be seen by Article 100, which provided that a Provincial Council could be dissolved by the Government, if the consent of the Federal Council was obtained.[3] The Article provides an example of the spirit of compromise which pervades the Austrian constitution, for, while the federal principle is undermined by the provision that a Provincial Assembly can be dissolved by a State organ, it is safeguarded by the provision that the assent of the highest federal organ shall be necessary for such a dissolution.

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692 The Administrative and the Constitutional Courts were clearly intended as State organs (although, as has been pointed

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[1] The provisions of this article should have been applied also to Article 34 (dealing with representation of the Provinces in the *Bundresat*). Originally Articles 34 and 35 were one. When they were separated the constitutional committee omitted to make Article 35, (4), apply to both of them, though it was clearly far more important that it should apply to Article 34.

[2] Cf. with provisions for trying cases before the Permanent Court of International Justice (Statute of the Court, Article 31).

[3] The consenting vote, however, required a quorum of one-half of the members, and a two-thirds majority.

out, the Provinces exercised a certain indirect control over the 642
appointment of their personnel). For instance, if a federal 635
minister considered that the interests of the State had been 692
injured by an erroneous decree of a provincial authority, he could bring the matter before the Administrative Court. No such provision, however, was made for appeals by provincial ministers against State decrees.[1]

Finally, the following provisions may be noted, which though 642
not themselves of great importance, none the less indicate the 635
general tendency to ignore the federal principle. By Article 41, (2), for instance, voters in three different Provinces could join in submitting an Initiative, provided that in each Province half of the qualified voters agreed to it. This was to be an alternative to an Initiative signed by two hundred thousand of the qualified voters in one Province, and was intended to safeguard the rights of minorities in the smaller Provinces. It was clearly, however, an infringement of the federal principle.[2]

Finally, the formula used in the publication of laws is "The 671
National Council has decided . . .", etc. (If the law is passed 642

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[1] Article 129, (2). This may be compared with Article 140, (1), regulating 635
appeals to the Constitutional Court. In this case the right of appeal is guaranteed both to the State and to the Provinces.

It may be noted that in the important sphere of finance, the control of the State was to be even further extended, by the Finance Constitutional Law of 3 March 1922 (B. G. Bl. Nr. 124). If a proposed provincial law dealing with financial matters was vetoed by the Federal Government, its re-passage by the Province concerned, with a special majority, did not settle the matter. 'In diesem Falle kann nämlich die Bundesregierung den Einspruch trotz des Wiederholungsbeschlusses aufrechterhalten. Der dadurch entstandene Konflikt zwischen Bundesregierung u. Landesgesetzgebung wird durch einen ständigen gemeinsamen Ausschuss des Nationalrates u. des Bundesrates entschieden. Dieser hat nämlich zu beschliessen, ob der Einspruch aufrecht zu bleiben hat, oder nicht. Entscheidet sich der Ausschuss für den Einspruch der Bundesregierung, erhält deren Veto einen absoluten Charakter.' (Kelsen, *Jahrbuch des öffentlichen Rechts*, vol. xi, p. 258.)

[2] This article may be compared with Article 15, (3). In this case, the Provinces must co-operate in the passage of supplementary legislation under Articles 11 and 12. If they fail to do so, the right to pass such legislation is transferred to the federal minister. These two articles might seem to conflict with Article 107. But Article 107 is probably intended to prevent a combination of Provinces hostile to the central Government (cf. with Imperial Decree of 1860). Co-operation between the Provinces was not, on the whole, encouraged. By Article 107, for instance, Provincial Councils were forbidden to communicate with one another, except in matters falling within their autonomous sphere of action.

642 as the result of a Referendum this is noted.) No mention is
635 made of the co-operation of the Federal Council. Laws are
671 dated in the Federal Law Book from the day of their third
reading by the National Council.

### (iii) *The National Council*

642 The Austrian State was reorganized by the constitution of
646 1920 as a democratic, federal, and parliamentary republic.
The pivot of the whole political structure was the National Council.

The sovereignty of the National Council was ensured by the almost complete absence of provisions for its control either by the people who elected it, the Federal Council, the Government, or the President.

From the first of these possible controlling bodies the National Council was virtually divorced after it had been elected. It was specifically laid down in Article 56 that members should not be bound by instructions. The people could, it is true, introduce legislation directly, by the device of the Initiative. They were not, however, encouraged to do so; the numbers of supporters required for an Initiative motion was, as has been pointed out, comparatively high; nor was the National Council bound to pass such bills. Similarly, proposals involving a complete revision of the federal constitution had to be submitted to a Referendum. But no attempt was made to define what was meant by a 'complete revision'; and again, it was not stated that the National Council was bound by the result of such a Referendum. Other measures only had to be submitted to a Referendum if the National Council so decided.[1] The National Council could only be dissolved before the end of its four-year term of office by its own decree. If it was so dissolved, it had to be reassembled by its President, if a quarter of its members so requested.[2]

But, if the National Council was not controlled by its electors, still less was it controlled by the Federal Council. The Federal Council had, as has been pointed out, in a few

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[1] Article 43.

[2] Article 28.

isolated and comparatively unimportant instances an absolute 642
veto; in the majority of cases it had a suspensive veto,[1] and in 646
a small number of extremely important cases, concerned with financial matters, it had no veto at all.[2] It had little control over the Government. It could, as the National Council, inquire into the Government's conduct of business.[3] But it could not, by a withdrawal of confidence, cause the dismissal of the Government.[4] In any case, it was possible for the National Council to exercise an indirect control over its composition, because, owing to a mistake in drafting, the Federal Council did not possess an absolute veto right in regard to alterations to Article 34, dealing with representation of the Provinces in the Federal Council. Provided that the requisite majority could be obtained in the Federal Council, the Government, which was the tool of the National Council, could dissolve a Provincial Council and thereby remove its representatives from the Upper House.

The President, whose functions were not intended to be 642
other than decorative, was elected by the Federal Assembly;[5] 643
the National Council could take the initiative in calling the 646
Federal Assembly together to impeach him.[6] He was the servant of the National Council, not its master.

But the sovereignty of the National Council comes to the fore 642
most clearly in the provisions made to ensure its control over 646
the Government. Article 70, (1), decrees that the Government shall be chosen by the National Council, voting upon the proposal laid before it by the Chief Committee.[7]

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[1] Article 42, (4).
[2] Article 42, (5).
[3] Article 52
[4] Article 74, (1).
[5] Article 60.
[6] Article 63, (2).

[7] 'Die Bundesregierung wird vom Nationalrat in namentlicher Abstimmung auf einen vom Hauptausschuss zu erstattenden Gesamtvorschlag gewählt.' This article might, however, suggest that the National Council had a more absolute control over the personnel of the Government than was actually the case. By Article 72, (2), for instance, it was stipulated that the list of ministers should be countersigned by the new Chancellor. Therefore, in fact, this meant that the Chancellor chose his own colleagues although his choice was subject to the approval of the National Council. Kelsen remarks: 'Die . . . Bestimmung, dass der neugewählte Bundeskanzler die Bestellungsurkunden aller Mitglieder der Regierung gegenzuzeichnen hat, hat praktisch die grosse Bedeutung, dass kein Mitglied des neuen Kabinettes gegen oder ohne den Willen des präsumtiven Bundeskanzlers berufen werden kann.' (*Die Verfassungsgesetze der Republik Österreich*, vol. v, p. 168.)

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Article 70, (3), provided for the eventuality of a Government resigning while the National Council was not in session. In this case, a new Government had to be chosen provisionally by the Chief Committee. As soon as the National Council reassembled, the election of the Government had to take place as usual.[1]

Members of the Federal Government were responsible to the National Council while in office,[2] and impeachment proceedings could be brought against them.[3] The Government could be questioned on all matters relating to the execution of the laws by members of both Houses. Both Houses could express their wishes in regard to the exercise of the executive power, by resolution.[4] And it was even laid down by Article 55 that in addition laws could be introduced providing that particular ordinances of the Government should require the assent of the Chief Committee. The presence of the Government could be demanded by either House, and by the committees.[5]

Another means of control by the National Council over the Government was the Independent Court of Audit. This court was responsible for drafting the balance-sheet of the Budget and presenting it to the National Council. It could examine the expenditure of every agency of the Federal State. It could be entrusted with the right to examine the expenditure of any enterprise in which the Federal State was financially interested.[6] And by Article 122, (1), it was expressly laid down that the Independent Court of Audit was directly responsible to the National Council.[7]

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Finally, by Article 74, (1), it was decreed that if the National Council, by express resolution, withdrew its confidence from

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[1] This provision, safeguarding the power of the National Council, had not been included in the constitution of 14 March 1919.

[2] Article 76.

[3] Article 142, (2), b.

[4] Article 52.

[5] Article 75. On the other hand, members of the Government could take part in debates in the National Council, the Federal Council, and the committees (except debates in the Chief Committee, to which they had to be specially invited). They had always to be heard if they wished to speak.

[6] Article 121.

[7] The president of this court was elected by the National Council on proposal of the Chief Committee, Article 122, (3). He could be dismissed by resolution of the National Council, Article 123, (2).

the federal Government, or from individual members of the 642 Government, they would be thereby removed from office.[1] It 646 was not, however, intended that this weapon should be lightly 689 employed against a Government, for it was stipulated that such a resolution would require a quorum of half the members of the National Council. And, if one-fifth of the members so demanded, the vote could be postponed for two days.[2] The Government, apart from this somewhat meagre stipulation, had no means of protecting itself against an adverse vote by a chance coalition in the National Council, since it could not confront the National Council with the choice between continued support and a dissolution.

As has been pointed out, the National Council had practi- 642 cally complete control over all legislation. It had also con- 646 siderable executive functions. By Article 50, political and certain other treaties required for their validity the consent of [648] the National Council. By Article 53, it was empowered to set up by resolution Committees of Inquiry,[3] before which all public authorities were obliged to give evidence if required. By Article 54 certain executive duties were specifically made [655] over to the National Council, such as the fixing of the prices of such federal services as railways; the fixing of the prices of [465] monopoly goods; and the fixing of the salaries of persons employed by the State. Apart from these specified cases, it was 642 laid down in Article 55 that the National Council should share 646 in the executive power of the State through its Chief Com- 647 mittee, to which reference has already been made. Kelsen has described this body as the most important political organ of the National Council.[4] Provision had been made for its election in the constitution of 14 March 1919. Its membership had then been fixed at eleven, whereas by the constitution of 1920

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[1] It may be noted that, since it was anticipated that the dismissal of an individual minister by a vote of no confidence should not necessarily involve the resignation of the whole ministry, the cabinet system was not adopted.

[2] Kelsen comments on this: 'Dass die Wirkung des Misstrauensvotums verfassungsgesetzlich ausdrücklich normiert wird, ist eine Besonderheit unserer Verfassung' (op. cit., vol. v, p. 169).

[3] Cf. with Article 34 of the German Constitution, according to which such a committee had to be set up if one-fifth of members so demanded.

[4] *Jahrbuch des öffentlichen Rechts*, vol. xi, p. 246.

642 the number of members was not specified. And the President
646 of the National Council was no longer *ex officio* a member and
647 Chairman of the Committee. The Chairman was now elected
by the Committee itself. The Chief Committee was elected by the National Council from among its own members, on a basis of proportional representation of all parties.[1]

642 Finally, the control exercised by the National Council over
646 the judiciary was considerable. By Article 86, (1), it was decreed
693 that the judges should be appointed upon nomination by the
Federal Government.[2] The control exercised by the National Council over the Federal Government has just been pointed out. That exercised by it over the Independent Court of Audit has also been referred to. The President and half the members of the Administrative Court were appointed by the Federal Government upon nomination by the Chief Committee.[3] The President, Vice-president, and half of the members and deputy members of the Constitutional Court were elected by the National Council.[4]

It may be said, therefore, that by the constitution of October 1920, Austria was reconstructed as a democratic, federal, and parliamentary State, the pivot of which was intended to be the National Council.

### (iv) *Conclusions*

642 The chief criticism that can be levelled at the 1920 constitution is the weak position in which its provisions placed the Government, the proper authority of which was deliberately undermined, mainly because of the fear of a return to the old, too powerful rule of the executive. The fact that the right to demand a dissolution was withheld from the Government, together with the fact that, owing to the introduction of pro-

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[1] It may be noted that, although the National Council exercised no direct control over the Provinces, it did exercise very considerable indirect control, through its control of the Government.

[2] With regard to this article, it may be noted that although the senates were required to produce proposals for such appointments, these proposals were not, as they were in the project of 22 November 1918, made binding on the Government.

[3] Article 135.

[4] Article 147, (2).

portional representation, it would probably not often be possible for a Government to rely upon a safe majority, meant that its position was unlikely to be a strong one. And it was clearly improbable that such a Government would be in a position to pursue a coherent policy. It would be bound to consider the probable reaction of each part of its programme upon the various parties on whose support it was dependent, and even if it had not made definite promises to exclude certain policies and include others, such considerations would probably necessitate the pursuit of largely negative and often inconsistent policies.

The evils which ensued could have been foreseen, for it was clear from the beginning that the future well-being of Austria would depend upon the capacity of her rulers to pursue a firm policy of reconstruction over a period of years, unhampered by the exigencies of party politics. Moreover, the danger to be feared from an unduly powerful Government could have been obviated had it been made clear that, as in England, the Government was simply the executive committee of the Lower House. But the Austrian constitution provided that although members of the Government must be eligible for election to the Lower House, they need not actually be members of it.[1] The evils which inevitably ensued from this deliberately manufactured weakness of the executive gradually operated to bring the whole theory of democratic government into disrepute in Austria.

The second criticism which may be levelled at the 1920 constitution was the ill-advised introduction of proportional representation. Although, as has been pointed out, one consequence of this was certainly to make possible a tighter control by the National Council over the Government than had been intended, it had also the effect of weakening the National Council itself, for this became as a house divided against itself, a battleground for rival groups. And the battle was not only fierce, but also futile, for the closed list system,

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[1] Article 70, (2). Having separated the two bodies, a characteristic attempt was made to link them up again, through the Chief Committee of the Lower House.

642 which had been introduced as the concomitant of proportional representation, meant that members to a large extent ceased to be free agents, and tended to act under the dictates of their respective party caucuses. The activity of the National Council was the more arid in that there was no possibility of its being either suspended or dissolved before the expiration of its term of office, except by its own volition. Thus in fact sovereignty lay not in the Lower House, but in an indeterminate body of persons, frequently unknown to and certainly not elected by the people, in whose hands lay the control of the party machinery.

As far as central Government went, Austria was thus provided by the 1920 constitution with a weak Government, an irresponsible Lower House, and a powerless electorate. This weakness at the centre naturally made itself felt throughout the whole organization of the State. A central authority so constituted could not have hoped to exert control over the dissatisfied and recalcitrant Provinces—nor could it ever have given the country as a whole the lead that was so urgently needed.

A third defect in the 1920 constitution, the removal of which might have obviated to some extent the first two, lay in the lack of power accorded to the Upper House. This omission was the more unnecessary in that the constitution laid down carefully the conditions regulating election to the Upper House; and they were such that there would have been little danger that the Upper House would have constituted a stronghold of particularist tendencies, in permanent opposition to the central Government. In fact, it appeared likely that the Upper House would, on the whole, share the political views of the Lower House. Had it been made permissible for the Upper House in certain circumstances to force a dissolution, as was the case in England before the passage of the Parliament Act, some safeguard would have existed against the danger of a Lower House continuing in office, and exerting its sway over Governments who were its puppets, after it had lost the confidence of the electorate.

The implication of certain articles is not clear. Article 9, for instance, enunciates the principle that 'the generally recognized rules of International Law form part of the law of the State'. This may mean, as Kelsen points out,[1] rules which are everywhere accepted—in which case the provision seems superfluous—or it may mean rules recognized by the majority of nations.[2] The meaning of Article 83, (3), also appears to be uncertain. Kelsen suggests that it may mean that extraordinary courts may not be set up to deal with individual cases, but only with classes of cases.

There are many cases of inaccuracy in drafting. Thus, for instance, Article 19, (1), mentions the President, the ministers, and the members of the provincial Governments as being elected commissioners of the people, who may be held responsible before the Constitutional Court. But the list of officials mentioned is not exhaustive;[3] and the Secretaries of State who are included in it could not in fact be held responsible, for they were answerable solely to their individual ministers.

The enumeration in Article 38 of the functions of the Federal Assembly was incomplete.[4] But Kelsen suggests that the omission is explained by the fact that it was not thought desirable to lay too much stress on its right to inquire into the work of, and, if necessary, prosecute, the President, and that the enumeration of this function was therefore deliberately omitted.[5]

In conclusion, it may be said that the failure of parliamentary democracy in Austria was implicit in the constitution of 1920, for this embodied devices such as proportional representation and the closed list, which almost always militate against the successful working of a democratic constitution, especially in politically backward states. And, apart from this, the constitution was probably too elaborate to be worked satisfactorily by a people inexperienced in self-government. It was also extremely expensive, in the number of officials required to work it, for so small a state as Austria.

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[1] Op. cit., vol. v, p. 76.

[2] Cf. Article 4 of German Constitution. In the case of Austria it may be observed that whereas by a generally accepted rule of International Law, treaties are valid if they are ratified by the head of a State, according to Article 50, such treaties require the consent of the National Council.

[3] See Article 142, (2), c and d.

[4] Cf. Articles 63, (1), and 68.

[5] *Die Verfassungsgesetze der Republik Österreich*, vol. v, p. 108.

# IV

# THE REFORM OF THE CONSTITUTION

## (i) *The* 1925 *Reforms*

BY 1925, when it was found necessary to introduce various alterations into the constitution of 1920, most of the defects to which attention has been drawn had become apparent. But the reforms of 1925 were, generally speaking, occasioned by administrative exigencies. No radical changes were introduced.

The division of legislative and administrative functions between the State and the Provinces as envisaged by Articles 10–15 of the 1920 constitution had not been at once effected, as it was felt that it would be more satisfactory to wait until three further measures had been passed, dealing respectively with the financial relationship between the State and the Provinces;[1] their respective functions regarding education, and a measure introducing a general reform of provincial administration.

The existing framework of local government was not well adapted to bear the strain of the 1920 constitution for, whereas in the pre-war period the greater part of provincial administration had been within the sphere of the State officials, while the provincial officials had been mainly concerned with legislative matters, this position was reversed by the Articles 10–15 of the 1920 constitution. The smaller and less well-organized group of provincial officials would thus have had to bear the strain of enormously increased duties, while the work of the Governor and the State officials would have been considerably curtailed. It was also hoped that the costly dual administrative system could be abolished before the new arrangements set out in Articles 10–15 came into force.

It was anticipated that these three measures would be passed within a few months. But although a bill regulating the financial relationship of the State and the Provinces was passed 642 on 3 March 1922,[1] it was found to be impossible to reach agreement on the other two proposed measures. The effects of the delay became increasingly serious, for the law of 1867, which was still in force as a temporary measure, restricted the legislative activity of the State to a minimum. This measure had been introduced in an era of economic liberalism, and it had already, by the end of the nineteenth century, been found necessary to disregard the limits set by it to State activity. Had these limits been rigidly adhered to, it would have been impossible, for instance, for the State to introduce any social legislation at all. But whereas before the war it had been possible to disregard the 1867 measure with comparative impunity, this was no longer the case in the post-war period, for, with the additional power given by the 1920 constitution to the Constitutional Court, it was always possible that one of the Provincial Governments would challenge even existing legislation as unconstitutional. And the overriding authority of the Emperor was no longer available for forcing through necessary measures. It was therefore considered advisable in 1925 to introduce the new provisions contained in Articles 10–15 of the 1920 constitution without further delay.[2]

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[1] This measure was passed on 3 March 1922. B. G. Bl. Nr. 124.

Certain reforms were made in the existing system of pro- 642 vincial administration, which were intended to facilitate the 635 working of the new administrative provisions and to prepare the way for a more comprehensive reform in the future. For instance, an attempt was made to end the dual administrative system. Since the war, both the provincial and the state officials (*Bezirkshauptmannschaften*) were indirectly under the control of the Provincial Governments,[3] the only difference being that in the latter case there existed a right of appeal to the Federal Government. Some doubt had, however, existed regarding the status of those officials whose work was concerned with both indirect and State administration, and with provincial administration. Now they were all declared provincial officials, and a new official, the *Landesamtsdirektor*, appointed by the Provincial Government, with the approval of the Federal Government, was placed at the head of all the officials in each Province.[1] Traces of the old dual system remained, however, for the erstwhile State officials, although now responsible solely to provincial authorities, continued to enjoy their old status as State officials, and attempts to alter this somewhat anomalous state of affairs came to nothing, owing to opposition from two of the three parties of the Government coalition.

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[1] B. G. Bl. Nr. 124

[2] Certain minor changes of a centralist character were introduced at the same time, e.g. more control was accorded to the State in matters regarding water and electricity (B. G. Bl. 268, Article 10, x).

[3] For the Provincial Governments assumed, since the war, responsibility for the appointment of the Provincial Governors to whom the State officials were responsible.

Certain minor reforms were introduced at the same time which were designed to strengthen the three control organs of the constitution.

The most important of these reforms was that by which some control over provincial finances was accorded to the Court of Audit.[2] The measure was disapproved of by the federalists, and was only passed under pressure from the League Commissioner. At the same time, the previous position, by which the Court of Audit had acted as a control on the Government, was in some measure reversed. This was also a result of pressure from the League Commissioner, who was anxious both to strengthen the position of the Government, since this body was as a rule ready to co-operate with him, and to induce the Court of Audit to co-operate in carrying through League reforms.

Another important provision passed at that time was that by which the State was accorded the right of absolute veto on provincial taxation for the period from 13 August 1925 to 31 December 1930. Again, the influence of the League Commissioner is clearly perceptible.

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[1] B. G. Bl. 268, Article 106.

[2] B. G. Bl. 268, Article 127. Such control has been optional according to the terms of the 1920 constitution (Article 127), and only Burgenland had made use of it. The result had been that the Provincial Governments had been able to nullify the economies imposed by the League on the Federal Government. The Provinces were, however, induced to see reason at the *Länderkonferenz* of 1925.

## (ii) *The* 1929 *Reforms*

The period between the 1925 reforms and the very much 642 more radical alterations introduced into the constitution in 668 1929, was characterized by a steady deterioration of the internal political situation.

By 1929 dissatisfaction with the existing régime had reached a climax. It had already been found necessary to introduce six minor reforms,[1] and, as the 1920 constitution was still not working satisfactorily, desire for a more radical change began to be voiced.

The demand was put forward with the greatest insistence by members of the *Heimwehr*, who openly proclaimed their intention to be the supersession of the existing system of parliamentary democracy by a dictatorship on the general lines of the Italian model.[2]

The desire for reform was not, however, confined to members of the *Heimwehr* movement. It was, for instance, energetically sponsored by the *Landbund*.[3] The movement was also warmly supported by the vast majority of the Christian Socialists, although opinion within the party differed considerably as to what precise measures should be taken. Certain sections in the Provinces, for instance, disapproved strongly of the centralist part of Schober's programme.[4] And peasant opinion feared

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[1] *Jahrbuch des öffentlichen Rechts*, vol. xviii, 1930, p. 130.

[2] 'Die Heimwehren forderten, u. fordern noch jetzt, der Ersetzung der parlamentarischen Demokratie durch eine berufsständische Organisation in Verbindung mit einer Art Führerdiktatus, ohne jedoch, diese Forderung im einzelnen zu konkretisieren.' (Kelsen, op. cit., vol. xviii, p. 1930.)

[3] The *Landbund*, however, repudiated strenuously the Social Democrats' accusation that it was working for the installation of a fascist régime. See article in the *Landbund* organ, *Die Stunde*, 20 September 1929: 'Er deckt sich in keiner Weise mit jener rein fascistischen Verfassung, die im Schosse der extremen Kreise der Selbstschutzverbände ausgearbeitet wurde, u. die mit einer vollständigen Beseitigung der demokratischen Verfassung der Republik Osterreich gleichbedeutend wäre. Der Landbund will keineswegs eine fascistische Regierungsform in Österreich installieren, er will nur in manchen, freilich sehr wichtigen Punkten, die gegenwärtige österreichische Verfassung im Sinne einer Stärkung der Staatsautorität abändern.' It seems doubtful, however, whether much reliance should be placed on this statement. The policy of the *Landbund* was a somewhat uncertain one. (See *Manchester Guardian*, 15 October 1929.)

[4] *The Times*, 19 October 1930.

642 that concentration on constitutional reform might deflect
668 attention from the need for energetic economic measures.[1] There was also a sharp division of opinion between the more moderate members of the party, led by Kunschak, who would probably have liked to see a *rapprochement* with the Social Democrats and the right-wing leaders led by Seipel.

The German Nationalists had been advocating reform for many years, as they hoped thereby to bring the Austrian constitution more into line with that of the Reich.

Most of the Social Democrats were probably not opposed to a moderate measure of reform,[2] although in their opinion disarmament was a far more pressing need.[3]

The great difficulty was, however, to reconcile the aims of the moderates of both parties with those of the extremists, who wanted rather to destroy than to reform.

642. There can be little doubt that a great deal of the disorder in the public life of Austria did lie, as Schober and his followers maintained, in the weakness of the executive. This weakness was in part the inevitable result of the particular circumstances in which the country was placed in the post-war years; economic distress, foreign control, party quarrels, certainly played their part. But all these difficulties might have been overcome, or at least would not have been felt so acutely, had it not been for inherent defects in the constitution of October 1920.

The reasons which prompted the Austrians to mistrust the power of the Government at that time have already been discussed. But, just as they did not foresee in 1920 the difficulties in which this arrangement would involve them, so in 1929 they did not fully realize to what ultimate cause those difficulties were due. The reformers of 1929 mistook effects for 642 causes.

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[1] *Frankfurter Zeitung*, 14 September 1929. The Lower Austrian *Bauernbund*—one of the strongest groups within the party—was especially insistent upon this danger. The Social Democrats agreed, see *Frankfurter Zeitung*, 23 October 1929, report of a speech of Renner. 'Wir glauben nicht, aber, dass der Wirtschaft am meisten gedient wird, wenn durch einen rechtzeitigen u. raschen reformierischen Umbau unseres Staates u. unseres politischen Lebens der Keim der Unruhe u. der Spannungen entfernt wird.'

[2] *Manchester Guardian*, 9 September 1929.

[3] Renner, speech on first reading of the bill, reported in *Frankfurter Zeitung*, 23 October 1929.

It was, for instance, widely felt that one of the great evils in the post-war Austrian state had been the politicizing of every department of public life.[1] This was certainly true. But it was not realized that the cause of this lay to a great extent in the constitution itself. The Government had been deliberately placed under the control of the National Council; and instead of being regarded as the executive committee of that body, it had come to be considered as a weak, but potentially dangerous, rival, whose powers must be curtailed at all costs.

The National Council possessed all the necessary constitutional 642 means to enforce its authority. But it was itself controlled 646 by the party leaders as, owing to the system of proportional representation and the closed list, these had almost 665 absolute control over its members. Thus the proper organs of control—the electorate, the National Council, and the Government—had been in the hands of an irresponsible group of men, many of whom were possibly not even known to the Austrian public.[2] For twelve years the party system had thus run riot in Austria, and in consequence many people had come to believe that it was a system inherently vicious, and to advocate its supersession, and the substitution of some non-party form of organization in its stead. But in fact, different parties are simply the organized expression of differences of opinion among the electorate, and as such they are a necessary concomitant of any democratic government. Their abolition may temporarily hide such differences, but can hardly eradicate them. And, if differences cannot be voiced constitutionally, they may

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[1] 'Tatsächlich ergab sich auf Grund dieser Verfassung im Verlauf der vergangenen zehn Jahre eine Ueberpolitisierung unseres gesamten Lebens, eine Diktatur des Parteiwesens, dessen Einfluss weit über den politischen Bereich hinaus greift u. so ziemlich alle Gebiete des wirtschaftlichen wie des geistigen Lebens erfasst hat. (*Neues Wiener Tageblatt*, 22 September 1929.)

[2] The disadvantages of the closed-list system were, however, beginning to be understood, and the need for a closer connection between electors and elected urged. 'Tatsächlich wurden die Volksvertreter in ihrer Überzahl nichtmehr vom Volke gewählt, sondern von den Parteiführer, den Parteisekretariaten nominiert.' (*Neues Wiener Tageblatt*, 21 September 1929.) For the same reason large electoral districts were now deprecated. In the end, however, the electoral system remained unchanged.

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642 well find a more dangerous outlet. The parties were not the
646 villains of the piece—but the constitution, by which they were
645 accorded a disproportionate amount of power.

Distrust of the National Council was manifested on all sides.
64? The parties of the right hoped to undermine its power by
66 strengthening the office of President; the Social Democrats, by a more frequent use of the Referendum.[1] In fact, it transpired in the course of the 1929 debates on constitutional reform, that the Social Democrats had revised their views on constitutional questions almost as much as their rivals, the Christian Socialists. Renner, for instance, in the debate on the first reading, remarked that the great weakness of the 1920 constitution had been the concentration of power in the Lower House, to the exclusion of all other bodies.[2] For this reason he announced his approval of the proposals made for strengthening the position of the Government and the President.[3] It is true that Renner was very much more conservative in his views than the majority of the Social Democrats. But the party leaders as a whole were well aware that they were on the defensive, and they did not therefore show themselves averse from reasonable compromise.

642 One result of the over-politicizing of public life, to which
647 attention had frequently been drawn in the past by Dr. Zimmermann, had been a tendency to multiply officials, and thus to increase the cost of government.[4] Attempts to check

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[1] Their proposal was that every bill taken up by Parliament should be submitted to a Referendum if one-third of the National Council advised it, or if 300,000 electors demanded it. (See *Pester Lloyd*, 10 October 1930.)

[2] 'Das ist die erste grosse u. tragische Schwäche unserer geltenden Verfassung, dass sie nicht ein Gleichgewicht hergestellt hat unter den mehreren Trägern der staatlichen Autorität, sondern dass sie alles auf eine Karte gesetzt hat, dass sie den Staat u. seine Ordnung, seine Sicherheit u. Freiheit auf die eine Säule des allmächtigen Parlaments aufbauen wollte. . . . Die Verfassungsnovelle ist vor allem charakterisiert durch das Bemühen, das alte demokratische Ideal der Gewalttrennung durchzuführen.' (*Stenographisches Protokoll*, 102 Sitzung, 22 October 1929.)

[3] 'Es soll vor allem die Bundesregierung in ihrer Position gestärkt werden. Das geschieht schon dadurch, dass der Bundespräsident sie ernennt. Der vorliegende Entwurf hält die Mitte zwischen der Präsidenten-Republik u. der Parlamentarischen-Republik; ich glaube eine gesunde u. richtige Mitte' (op. cit.).

[4] *Neues Wiener Abendblatt*, 18 September 1929. Schober pointed out that Austria, a country of seven million persons, had seven hundred members of legislative bodies, (*Reichspost*, 20 October 1929.)

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the growth of federalism, and so simplify the structure of 642
government, had actually contributed further to this end.[1] 647
The number of officials was to some extent curtailed by the 1929 reforms. The National Council was reduced from one hundred and sixty-five to one hundred and twenty members,[2] and the Provincial Councils were limited in proportion to the number of citizens in the Province.[3] The cost of administration in general was cut down. But Schober announced after the passage of the Bill that he was still far from satisfied in this respect. The fact that the constitution of 1920 was, in any case, too expensive and too complicated to be worked satisfactorily by a people inexperienced in the art of self-government was not, however, generally grasped,[4] and the constitution emerged after the reforms if anything more complicated than it had been before.

One of the chief aims of the reforms was to strengthen the 642
executive. The power of the President, hitherto little more 643
than a figurehead, was therefore greatly extended, chiefly at the expense of the National Council.[5] Schober made use of the suggestions put forward by the Pan-Germans at Salzburg in 1920, by the Christian Socialists since the beginning of 1928, and by the *Landbund* in a memorandum addressed to Steeruwitz on 31 August 1929.[6] In the main the new proposals followed the German model. The President's term of office was extended from four to six years; and direct election was substituted for indirect. The Christian Socialists maintained firmly that this was the more democratic method.[7] The device

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[1] Thirteen different kinds of jurisdiction were now recognized, instead of the four envisaged by the constitution of 1920. Kelsen remarks that 'die Folge davon . . . ist, dass die Verteilung der Kompetenzen zwischen Bund u. Ländern ein überaus kompliziertes Bild der verschiedensten Rechtsfiguren zeigt'. (*Jahrbuch des öffentlichen Rechts*, vol. xviii, pp. 133–4.)

[2] A result of the restriction of the franchise to those over twenty-one years of age.

[3] B. G. Bl. Nr. 393, Article 95, (4).

[4] The Social Democrats, for instance, proposed a wider use of the Referendum, by which every bill should be submitted to the people, if one-third of the National Council so desired, or if 300,000 electors so requested. (*Pester Lloyd*, 10 October 1929.)

[5] Articles 60–7. The idea of a strong government was still suspect.

[6] Malbone W. Graham, 'Constitutional Crisis in Austria', *American Political Science Review*, vol. 24, 1930.

[7] *Reichspost*, 22 October 1929. Seipel, ibid., 19 October 1929.

642 643 adopted was, however, not unexceptionable. Election was compulsory and, if no candidate succeeded in gaining an absolute majority in the first count, only the two parties having the largest number of votes in the first count could nominate candidates for the second. Since these could then nominate new candidates there was nothing to prevent parties that had gained a large number of votes, by putting up moderate candidates, from confronting the people with extremists in the second count.[1]

642 643 644 The power of the President over the Government and the National Council was considerable. The President, and not the Chief Committee, now appointed the former, although the confidence of the National Council was still necessary.[2] The President could dissolve the National Council, with the assent of the Government. But he could only do this once for the same reason; and fresh elections had to be held within ninety days.[3] During this period, however, the Government could carry on in virtue of its right to issue ordinances.[4]

In general, the principle of parliamentary rule was much weakened by the fact that it was now assumed that Parliament was not a permanent body. The President had to assemble it in the spring and the autumn. It was laid down that the spring sitting should last for at least two months, but that it could not continue after 15 June. The autumn session had to be for at least four months, but it could not begin until after 15 October.[5] It was envisaged as a possibility, therefore, that the National Council would not be in session for more than six months of the year. Committees could, however, be entrusted with carrying on the work when it was not in session.[6] And it was provided that it should be reassembled should a third of the Upper or Lower House so demand. In this case, it had to be summoned within two weeks for an extraordinary session.[7]

The power of the National Council over the budget also

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[1] The original proposal had been that the President should be directly elected, but that the verdict might be revised by the two legislative chambers. (*The Times*, 15 October 1929.)

[2] Articles 70, (2), and 74, (1).

[3] Article 29.

[4] Article 18, (3).

[5] Article 28, (1).

[6] Article 28, (4).

[7] Article 28, (2).

declined. The original proposal had been that, if the budget 642
were not voted at the right time, the provisions of the previous 643
year should hold good. Eventually, however, this period was 646
limited to eight weeks.[1]

The corollary of these limitations placed upon the power of the hitherto omnipotent National Council was the legislative power now entrusted to the President. Kelsen remarks, for instance, on the importance of the new ordinance right.[2] This innovation was regarded with the deepest suspicion by the Social Democrats, who saw in it an attempt to resuscitate the famous Paragraph 14 of Imperial days. Schober, however, solemnly asserted that nothing of this kind was intended. He pointed out that it had been found necessary to entrust the executive with the right to issue ordinances in certain circumstances in most other democratic countries, as France, England, Ireland, Czechoslovakia, etc. The Social Democrats, however, wanted this power to be made over to the Chief Committee and liberal opinion disapproved strongly of the whole arrangement.[3] Eventually, a compromise was reached by which all ordinances issued by the President required the immediate assent of a sub-committee of the Chief Committee, and the assent, within a month, of the National Council, which had to be summoned to consider them within eight days.[4] Ordinances could not change constitutional laws, impose permanent financial burdens, or alienate State property. It was further provided that ordinances should only be issued in

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[1] Article 51, (3).

[2] Kelsen, *Jahrbuch des öffentlichen Rechts*, vol. xviii, p. 141: 'Im innigsten Zusammenhang mit der Einschränkung der Parlamentsfunktion steht die sehr einschneidende Reform, die das Verordnungsrecht einführt.'

[3] *Frankfurter Zeitung*, 10 October 1929: 'Die Minorität würde so stets unter Druck gesetzt werden können, dass Gesetzentwürfe, die sie nicht schnell annehmen lässt, durch Notverordnung erlassen werden.'

[4] Article 18, (3) and (4). Kelsen considers, however, that this last provision would not apply to ordinances passed during the period of ninety days during which it was legal for the President and Government to rule without Parliament. He admits, however, that 'die Verpflichtung der Regierung, eine von ihr erlassene Notverordnung dem Parlament unverzüglich vorzulegen, bedeutet eine wichtige Einschränkung dieses ausserparlamentarischen Gesetzgebungsrechtes'. (*Jahrbuch des öffentlichen Rechts*, vol. xviii, p. 142.)

642 cases of necessity and for purposes of defence.[1] But, as Kelsen
643 points out, this safeguard was worthless from a legal point of
646 view.[2]

The President was also made head of the army.[3] But this
642 was rather a change of emphasis than an actual increase in
643 presidential power. It may be noted, however, that the re-
701 forms gave more power to the army. Hitherto it had only been empowered to restore order if so requested by the civil powers. It was now permitted to step in, in case of emergency, without being so requested.[4]

642 Another marked tendency in the 1929 reforms was towards centralization. But although it was coming to be realized with increasing clearness in responsible circles that Austria could not afford the luxury of provincialism—either from a moral or from an economic standpoint—yet as Kelsen had pointed out two years earlier, this tendency was, if anything, gaining ground,[5] in spite of the increased centralization introduced by the 1925 reforms, and in spite of the general realization that provincialism must make the possibility of an *Anschluss* ever more remote.

642 It was also intended to introduce changes as regards the
organization of the Upper House, which, it was generally
646 admitted, had not worked satisfactorily.[6] The *Heimwehr*, the *Landbund*,[7] and certain other right-wing sections of Christian Socialist opinion were anxious to introduce the corporative principle, either wholly or in part. And a proposal was for a time considered by which the nine Provinces were to be repre-

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[1] Article 18, (3).

[2] 'Da das Vorhandensein dieser Umstände zu beurteilen, dem Ermessen der verordnenden Instanz selbst überlassen bleibt, und dieses Ermessen auch von dem seiner Überprüfung zuständigen Gericht—dem Verfassungsgerichtshof—nicht wirksam überprüft werden kann.' (Op. cit., p. 141.)

[3] Article 80, (1).

[4] Article 79, (2).

[5] 'Durch die politische u. staatsrechtliche Entwickelung seit dem Umsturz hat sich die Stellung der Länder so gekräftigt, haben sich die durch die Landesregierungen repräsentierten politischen Machtcentren in den ehemaligen österreichischen Krönlandern so sehr verwurzelt, dass an eine Umwandlung Österreichs in einen Einheitsstaat ernstlich nicht mehr zu denken ist.' (*Frankfurter Zeitung*, 4 April 1927.)

[6] Seipel, article in *Reichspost*, 19 October 1929.

[7] *Die Stunde*, 21 September 1929.

sented by eighteen members, while thirty-six members should 642
represent the professions and industries.[1] However, as Schober 646
pointed out, a reform of such magnitude could not be hurried through in a few days—particularly as it would mean a further increase in the number of officials.[2] It was anticipated, however, that another constitutional law would be passed dealing with this matter. In the meantime the composition of the Federal Council remained unchanged.[3]

A further step towards centralization was taken by extending 642
the control of the Court of Audit not only over provincial 635
finances but over districts which comprised more than twenty
thousand inhabitants.[4] Hitherto the control of the Court of 652
Audit had only been exercised in those Provinces which had not independent control organs of their own.[5] This change brought the finances of the city of Vienna under the control of the Court of Audit, and in consequence was bitterly opposed by the Social Democrats.

The right of appeal in matters dealing with provincial 642
administration was somewhat extended. 635

The powers of the State police were considerably extended 625
at the expense of those of the Provinces.[6] As a result of this legislation, the special municipal police force instituted in Vienna after the 1927 riots had to be disbanded. All State police were to be given an autonomous ordinance right, in virtue of which they could, under special circumstances, issue ordinances, which would have temporary validity, provided

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[1] *The Times*, 15 October 1929.

[2] *Reichspost*, 20 October 1929.

[3] But although no new legislation was introduced, a later paragraph referred to members of the Upper House as enjoying immunity in their capacity as members of Provincial Councils (Article 58, (1) ). But the old Federal Council members, although they had to be eligible for election, could not themselves be members of local assemblies (Article 35, (2), 1920).

[4] Smaller districts could be included if the Provincial Government concerned so requested (Article 127).

[5] B. G. Bl. Nr. 268, 30 July 1925, Article 127, (1).

[6] Kelsen, *Jahrbuch des öffentlichen Rechts*, vol. xviii, p. 132. 'So gut wie die gesamte Sicherheitspolizei ist der Zuständigkeit der Länder entzogen, und dem Bunde übertragen. Diese Monopolisierung fast des gesamten Polizeiwesens beim Bund bedeutet, wenn man beachtet, dass auch das ganze Militärwesen u. die ganze Gerichtsbarkeit von allem Anfang an beim Bund lagen—einen Grad von Zentralisation, der mit dem Typus des Bundesstaates kaum mehr vereinbar ist.'

642 that they did not contravene existing laws.[1] Schober gave an
625 assurance that this legislation was only intended to endow the police with such additional facilities for keeping order as no law-abiding man could take exception to.

[871] The State Minister for Education was now given control over all matters concerning education[2]—a concession on the part of the Social Democrats.

642 The future position of Vienna was the subject of much bitter
635 controversy. The Christian Socialists, seeing in its independence the key to many of the evils of post-war Austria, wished to deprive it of its provincial status, and reduce it to the position of a federal city under the direct control of the Federal Government. They maintained that it was not that Vienna was of lesser importance than the other Provinces, but that she was essentially different from them.[3] Her independent position as a Province could not, in their opinion, be reconciled with her special obligations as the capital city of the whole of Austria.[4] This, however, seemed to the Social Democrats like an attempt to have things both ways—federalism and the abolition of Viennese autonomy. But the Christian Socialists pointed out, with some truth, that the position of the Mayor of Vienna was very much stronger than that of an ordinary provincial Governor.[5] The Social Democrats argued, however, that it was ludicrous that the mayor of a city comprising two million persons should be reduced to the status of a mere *Bezirkshauptmann*, while a tiny province like Vorarlberg, comprising only 140,000 persons, should be in a position of

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[1] Kelsen comments as follows on these provisions: 'Mit der Vorschrift, dass die von den Polizeibehörden zu erlassenden Verordnungen, nicht gegen bestehende Gesetze verstossen dürfen, stellt sich die Verfassung auf den Standpunkt der mehr als fragwürdigen Lehre, die zwischen Verordnungen secundum Legem, praeter Legem u. contra Legem unterscheidet.' (Op. cit., p. 143.)

[2] Article 120, (1); *Frankfurter Zeitung*, 5 December 1929.

[3] *Reichspost*, 12 October 1929.

[4] 'Der geschichtlich gewordene, legitime Länderföderalismus ist ein Wesen für sich, u. kann nicht verwechselt werden mit der Stellung der Bundeshauptstadt, die als solche besondere Verflichtungen gegenüber dem ganzen Bund, als Sitz aller zentralen Institute hat.' (*Reichspost*, 19 October 1929.)

[5] *Reichspost*, 19 October 1929.

comparative independence.[1] According to the original proposals put forward by Schober in the form of three Bills, on 18 October, Vienna was deprived of its provincial status, and made directly dependent on the Federal Government. The powers of the Mayor were transferred to a Cabinet Minister, and the City Council reduced to twelve members.[2] These proposals could not, however, be carried, as the status of Vienna was an issue over which the Social Democrats were prepared to fight. And, in the end, Vienna retained its status as a Province. But a part of its revenue was in the future to be handed over to Lower Austria,[3] and a certain measure of control was accorded to the Federal Government regarding police, finance, and educational matters. And it was now possible to appeal to the Federal Government against decisions of the Mayor. 642 635

It may be noted that no provision was made by the new reforms for the existence of a 'State of Emergency', although this contingency had been provided for in the Weimar Constitution.[4] Kelsen draws attention, however, to the new provision of Article 102.[5] The intention of this passage is, Kelsen thinks, obscure. It may merely mean that measures normally within the competence of the local authority may be temporarily taken over by federal officials. It is not, however, expressly stated that the federal officials can only undertake matters which would be within the competence of the local authorities. Kelsen thinks it may be interpreted to mean that federal officials can, in such circumstances, take any measures which they may consider necessary to restore order. In this case, the provisions of the article do not seem to differ 642 essentially from those of Article 48 of the Weimar Constitution.

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[1] *Vorarlberger Volksblatt*, 19 October 1929.

[2] *Daily Telegraph*, 19 October 1929

[3] The German Nationalists had wanted the amalgamation of Vienna with Lower Austria. (*Frankfurter Zeitung*, 24 October 1929.)

[4] Article 48. Kelsen comments on this fact: 'Durch die Notverordnungen gemäss Art. 18 kann jedenfalls kein verfassungsmässig gewährleistetes Recht aufgehoben werden.' (*Jahrbuch des öffentlichen Rechts*, vol. xviii, p. 144.)

[5] 'Ergibt sich in einzelnen Gemeinden die Notwendigkeit, wegen Gefährdung der öffentlichen Ruhe u. Ordnung, besondere Massnahmen zu treffen, so kann der zuständige Bundesminister mit diesen Massnahmen für die Dauer der Gefährdung eigene Bundesorgane betrauen.'

In general, however, the reform when passed[1] did not institute any very revolutionary changes, nor was the passage of the Bill marked by any grave disturbances. The Social Democrats, who had at first opposed reform, in the end agreed to it, chiefly because they feared that resistance might result in a *Heimwehr Putsch*. They were, however, only prepared to agree to moderate measures, and made it clear that any attempt to push through an extremist programme without their consent (which was constitutionally necessary, as a two-thirds majority was required for passing measures affecting the constitution) would meet with unflinching resistance.[2] Their attitude was no doubt stiffened by promises of help from Germany.[3] But in the main, in spite of much provocation from the *Heimwehr*,[4] the party remained surprisingly calm. This was, no doubt, partly due to Schober's tactfulness, although in his negotiations with Herr Danneberg, the representative of the Social Democrats, he was considerably hampered by the attitude of the right wing of his own party.[1]

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[1] 18 October: Three bills presented to National Council. 23 October: After debate on first reading they were turned over to the Constitutional Committee. 28 October to 8 November: The Constitutional Committee delegated detailed discussion to a sub-committee of eight, of all parties. Negotiations between Schober and Danneberg completed on 13 November. 7 December: The bills voted by the National Council.

[2] Cf. Bauer's speech at the Congress of the League of Republican Defence: 'The time may come, and perhaps sooner than one thinks, when laws will be attacked, and we will defend them. The working class should be resolute in employing all its forces—life and death.' (*Le Temps*, 21 October 1929.)

Deutsch: 'We warn them that if an illegal situation arises in Austria, there will be civil war in the country, that is to say, the death of thousands of men, the destruction of property, the ruin of the national economy, and the loss of the Austrian people.'

[3] Cf. speech of Herr Hoeltermann, delegate of the *Reichsbanner*, at the Congress of the League of Republican Defence: 'There are hundreds of thousands of workmen in Germany prepared to defend democracy in Austria. If you need our support we stand ready to help you.' (*The Times*, 22 October 1930.)

[4] e.g. a pamphlet issued by Steidle and Pfrimer on 18 October: 'The once proud Socialists, driven into a corner, must bow their heads though boiling with fury. Herr Schober has got all that it is possible to get out of democracy and parliamentarism, and we accept it as the first payment on account for the *Heimwehr* idea, but that does not end our [illegible]. It merely consolidates our ground before advancing.' (*Daily Telegraph*, 19 October 1929.)

However, most of the more controversial measures were, in the end, abandoned. The position of Vienna remained substantially unchanged. The right of the executive to issue ordinances without authority from the legislature was restricted. The proposal to make constitutional a future change of the constitution by a simple majority was withdrawn.[2] Trial by jury, which it had been proposed to abolish in certain cases, was maintained. It may be said that the essentials of democratic government were maintained.[3] But it was clear that the emphasis on the new reforms was no longer, as before, on the safeguarding of the democratic principle.[4] The voting age was raised from twenty to twenty-one. The age of eligibility for election was raised from twenty-four to twenty-nine. Immunity rights were restricted.[1] Voting was made compulsory.[2]

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[1] *Daily Telegraph*, loc. cit.: 'The *Heimwehr* will see to it that the wretched compromising weaklings in the bourgeois camp are swept away in a storm of popular fury if they attempt to realize their cherished desire of reaching an agreement with the Socialists.'

[2] This had occasioned great excitement in opposition circles; see comment of *Frankfurter Zeitung*, 19 October 1929: 'Die einfache Mehrheit könnte also z. B. die Einführung der Monarchie beschliessen. Hier zeigt sich der Charakter dieser Novelle als Vorstufe zu weiteren Änderungen.'

In view of later events, it is interesting to note a suggestion which appeared in an article in the *Reichspost* on 8 October: 'Ist zur Verfassungsänderung die Zustimmung des Nationalrates erforderlich? "Nein" sagt der Verfassungsgerichtshof.' The article went on to explain that in virtue of a law passed on 24 July 1917 (B. G. Bl. Nr. 307) the Government was empowered to take special measures, in case of a state of affairs brought about by the war, to safeguard the economic interests of the State. The present condition of affairs had been brought about by the war; and an alteration of the constitution was necessary in the economic interests of the State. A revision of the constitution could, therefore, be effected by the Government without consulting Parliament. It was noted in the *Reichspost* of 27 November that the Social Democrats were now agitating for the repeal of this war-time measure. The idea was ridiculed, but three and a half years later Dollfuss succeeded in dissolving Parliament for the last time, in virtue of its authority.

[3] This was partly a consequence of the fact that by 11 November the partial results of the municipal elections had not turned out favourably for the *Heimwehr*, who therefore feared that if they forced a general election the results might not be favourable to them. (*Daily Telegraph*, 11 November 1929.)

[4] For instance, the phrase 'vom ganzen Bundesvolk gewählt' was no longer a part of Article 1.

These were merely signs, showing which way the wind was blowing. But the *Heimwehr* and the right-wing Christian Socialists openly asserted that the reforms could only be regarded as preliminary to greater changes.[3] And *The Times* of 9 December 1929 quoted a *Heimwehr* manifesto as follows: "It is not possible to regard the results obtained as the final realization of our aims, but simply as the first step of our movement towards the final end."[4]

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[1] *Germania*, 21 October 1929.

[2] Article 19.

[3] The *Frankfurter Zeitung* of 7 December quotes the *Reichspost* as remarking: 'Durch den hartnäckigen Widerstand der Sozialdemokraten sei nämlich die bessere ursprüngliche Verfassungsvorlage vereitelt worden, u. die neue Vorlage bedeute keinen Abschluss sondern nur eine Etappe auf dem Wege zur vollen Reform, den weiter zu gehen, die Staatsinteressen erforderten.'

[4] For text and general discussion of the significance of the 1929 reforms, see *Jahrbuch des öffentlichen Rechts*, vol. xviii; Kelsen, *Die Verfassung Österreichs*, pp. 130–60.

## VI

## THE INFLUENCE OF FOREIGN POLICY ON THE EVOLUTION OF DEMOCRATIC GOVERNMENT

648 THE difficulties experienced by Austria in the conduct of her foreign relations contributed, indirectly, to the general disillusionment with parliamentary democracy which came to be felt throughout the country. For it was all too obvious that the democratic theory of a policy inspired and controlled by the wishes of the people bore little or no resemblance to the facts of the case. Austria was, in fact, controlled by her creditors, who had over her, literally, the powers of life and death. And, since her foreign relations were matters of great moment to them, they did not hesitate to impose their own views on her Governments. These views were not shared by the great majority of Austrians. Thus it came about that successive cabinets, from 1919 till 1934, were obliged to pursue a foreign policy of which the electorate disapproved. This was the more unfortunate because foreign policy was a question of very great importance for post-war Austria, and the gradual realization that it was a matter over which public opinion could exercise no control did not enhance the value of democracy in the eyes of the Austrians.

The disillusionment began almost immediately after the war, when Austria was frustrated by France and the Allies in her plan for union with Germany.

642 The possibility of an independent existence for Austria had 648 never been seriously envisaged by any section of Austrian opinion after the break-up of the Empire, although certain elements in the Christian Socialist party had viewed the prospect of an *Anschluss* with some misgiving. Almost the first official pronouncement of the new republican Government had been to the effect that German Austria was a part of the German Reich.[1] Representatives from German Austria

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[1] Article 2 of the Declaration of 12 November 1918 (B. G. Bl. Nr. 5). It was arranged, however, that Austria should continue, for the time being, to be organized as a separate state.

attended the deliberations at Weimar on this assumption.[1] Bauer has stated that "our most important aim in the peace negotiations had to be the assertion of our right to unite with Germany'.

It seems probable that the Social Democrats were right in maintaining that the chief hope of survival for the young and somewhat frail plant of Austrian republicanism lay in the close connection of German Austria with the Reich. The Allies were, however, strongly opposed to any extension of German influence in the Danube basin, and Article 188 of the Treaty of St. Germain forbade an *Anschluss*, either immediately or in the future, without the consent of the League Council.[2] This article was, not unnaturally, felt to be extremely unjust, and strong protests were made against it, both in Germany and Austria.[3]

On the other hand, although it is almost certainly true that Austria and Germany would have joined up in the autumn of 1918 had they not been forcibly prevented by the Allies from doing so, it is equally true that public opinion, never unani-

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[1] On 6 February 1919, a message of congratulation was sent from the Provisional National Assembly, to the Assembly at Weimar, in which it was stated that the Austrian body '. . . spricht die Hoffnung u. die Überzeugung aus dass . . . es der deutschösterreichischen Volksvertretung gelingen wird, das Band, das Gewalt im Jahre 1866 zerrissen hat, wieder zu knüpfen, die Einheit u. Freiheit des deutschen Volkes zu verwirklichen u. Deutschösterreich mit dem deutschen Mutterlande für alle Zeiten zu vereinigen.'

Provision was made in due course by Article 61 of the Weimar Constitution for the early inclusion of Austria in the Reich.

[2] M. Beneš has since stated that he and Masaryk had envisaged until as late as 1917 the incorporation of Austria in Germany. They thought that this solution would constrain the remaining small states of Central Europe to form a close political and economic bloc. These ideas were only abandoned when it was found that they met with opposition from Italy, France, England, and Russia—especially the two former. 'Being completely loyal to our friends in the war . . . we accepted their standpoint in this matter, and have remained faithful to it up to now.' (Speech of 21 March 1934, *Czechoslovak Sources and Documents*, p. 29.)

[3] 'Die Nationalversammlung erhebt vor aller Welt feierlich ihren Protest dagegen, dass der Friedensvertrag von S. Germain unter dem Vorwande, die Unabhängigkeit Deutschösterreichs zu schützen, dem deutschösterreichischen Volke sein Selbstbestimmungsrecht nimmt, ihm die Erfüllung seines Herzenswunsches, seine wirtschaftliche, kulturelle, u. politische Lebensnotwendigkeit, die Vereinigung mit dem deutschen Mutterlande, verweigert.'

642 mous in this matter, became less fervent in its support as the
648 months passed. The monarchists and the big Austrian industrialists had never been in favour of an *Anschluss*; and, after the publication of the German Peace Terms on 7 May, the Austrian bourgeoisie shrank from identifying themselves with Germany, especially as France succeeded in creating the impression that Austria would get more favourable peace terms if she abandoned the *Anschluss* policy. It was also felt that if France were presented with a *fait accompli*, she might well incite the Yugoslavs and Czechs to occupy Austrian territory. Germany, for her part, feared the loss of further territory to France and Poland.[1] As time went on, however, these misgivings were forgotten, and only the injustice of the Allies' veto was remembered.

648 Austria's position in the immediate post-war period was not a happy one, for, frustrated in what she now believed to have been her unanimous desire to join Germany, there was no Power, democratic or otherwise, to whom she could turn for assistance. Hungary, denuded of two-thirds of her pre-war territory, was, if anything, in a rather more unsettled condition than Austria. And the two states, never on particularly friendly terms, were now divided by the incipient dispute over the Burgenland.[2]

There could be no question of the establishment of close relations with Czechoslovakia. It is true that in both countries democratic Governments were in power, and that the relationship between them was ostensibly friendly. But Czechoslovakia was a victor state, who, having recouped herself lavishly at the expense of Austria, was not unnaturally anxious to sever all connections with her late rulers, even though these showed signs of an ideological change of heart. Moreover, disputes over the frontier had not yet died down.

If Austria's relationship with Czechoslovakia was distant, her relationship with Italy was, at this time, one of positive hostility, because of the question of the South Tyrol. In this case. as in the case of the veto on the *Anschluss* with Germany, 648 the Austrians asserted bitterly that the principle of self-determination was only applied when the application was likely to work out in favour of the Allies.

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[1] Otto Bauer, *The Austrian Revolution*, Parsons (1925), p. 115.

[2] C. A. Macartney, *Hungary and Her Successors*, Oxford University Press (London, 1937), pp. 41 *et seq.*

Thus, in 1919, since there appeared to be no other alternative, German Austria had to subscribe to the policy of the Allies, and pose as an independent state. The maintenance of Austrian independence has been the official foreign policy of the country from the moment when Renner succeeded Bauer, the great protagonist of the *Anschluss*, on 28 July 1919.

Desirable though this policy may have been, from the point of view of Europe as a whole, it was an essentially artificial policy. And the fact that it had, for the most part, very little backing from public opinion, weakened considerably the standing in the country of the successive Governments who had to attempt to carry it out.

Opposition to official foreign policy amounted at times to a 648 declaration of war on the Federal Government, and this at a 642 time when national unity was a matter of prime importance.[1] These 'unofficial' agitations caused such grave disquiet in Allied, and particularly in French circles, that on 14 April 1920, M. Lefèvre Pontalis handed a Note to the Chancellor, on behalf of his Government, stating that, if the Austrian Government were not in a position to suppress the *Anschluss* agitations, the French Government would withdraw its support from schemes to help Austria. On hearing of this Note, the British and Italian Governments intimated to the Austrian Government that such an action on the part of France would mean the complete collapse of schemes to assist Austria. Thus the French Note really amounted to a command to the democratically elected Government of Austria to override and suppress the wishes of its electorate.[1]

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[1] In December 1919, Tyrol and Salzburg respectively petitioned to be allowed to join the Reich. On 31 March 1920 the Tyrol *Landtag* requested the Renner Government to present a petition to the Ambassadors' Conference for the union of Tyrol with Germany, on economic grounds. Renner replied that although he could not refuse to present such a petition, he deplored it. It would not be granted, and it would only have the effect of discrediting Austrian representatives in the eyes of the Allies and thus making negotiations for economic assistance more difficult. Tyrol, however, persisted: and Salzburg followed suit.

The difficulties of Renner's position were increased by the fact that he was not supported by his own party. On 5–7 November 1919, for instance, at the Social Democratic Party Conference, the party announced its continued adherence to a policy of *Anschluss*.

The same difficulties confronted the Christian Socialist Mayr cabinet, which came into office on 3 November 1919. On 3 February, for instance, a deputation from the Provinces demanded the organization of a plebiscite to decide whether or not an *Anschluss* petition should be presented to the League. Arrangements for such a plebiscite were made in Salzburg, on 11 March 1920 for 24 April; and in Steiermark on 7 April for 30 May.

In this way, the Austrian people were alienated in sympathy from their elected representatives, at the very time when it was most essential that the new state should be welded into a coherent whole, by leadership from a strong popular Government.

The goal of Austrian 'independence' was, moreover, receding rapidly into the distance. The conditions which it was felt necessary to attach to the granting of the League Loan in 1922 were such as to be scarcely compatible with the existence of Austria as an independent sovereign state at all.[2] League control was withdrawn in 1926. But it became all too obvious in 1931 that the narrow margin which had till then separated Austria from economic collapse would not suffice to enable her to stand up to the economic blizzard which descended upon Europe and America. And, in 1932, when the Lausanne Loan was granted, even more stringent League control was imposed.

It is true that by 1932 the situation had somewhat changed, for, with the rise of the Nazi movement in Germany, more moderate Austrian opinion came to regard a policy of indepen-

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[1] The Note occasioned a stormy scene in the National Council in the course of which Mayr pointed out bluntly that Austria was not in a position to refuse the demands of the Allies: 'Wir werden ohne auswärtige Hilfe vielleicht schon in zwei Monaten nichts mehr zu essen haben.' (*Stenographische Protokolle*, 15 April 1920.)

Finally, the Mayr cabinet resigned on 1 June, on the grounds that the *Anschluss* agitations had made its position impossible.

[2] She had to agree to submit her finances, and the general economic policy of her Government, to control by a committee of the guarantors of the loan, which was to be represented in Vienna by a Commissioner-General. She had also to agree not to 'endanger' her independence by the granting of a 'special *régime*' to any one state. (League of Nations, *The Restoration of Austria*, Agreements arranged by the League of Nations and signed at Geneva on 4 October 1922, with the Relevant Documents and Public Statements. C. 716, M. 428, 1922, x, Geneva, 1922.)

dence with less disfavour. But the fact remains that for fourteen 648
years, successive Austrian Governments were compelled to 642
attempt to carry out a foreign policy which was directly contrary to the wishes of the great majority of the people by whom they had been elected. In fact, of course, the various Governments had no option in the matter; but an electorate frustrated in its dearest wish does not pause to consider the good reasons which may exist for this frustration, especially when its temper is sharpened by acute economic distress.

There can be little doubt that what the vast majority of the Austrian electorate wanted during these years was an *Anschluss* with Germany, although this desire was not always felt with equal intensity by the different sections of the population.[1]

The chief supporters of the *Anschluss* policy of 1919–22 had 642
been the separatist peasantry of the Alpine province, who were 668
influenced to a large extent by temporary economic considerations. After 1925 the movement derived its strength mainly from the Civil Service, the professional classes, and the industrialists. If less spontaneous, this later movement was very much better organized and, unlike its earlier counterpart, it received positive support from high places in Germany. It was the beginnings of the renascence of German nationalism.[2]

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[1] In 1923 and 1924, for instance, agitations for an *Anschluss* died down, partly owing to the comparative success of the Reconstruction Scheme in Austria, partly because of the bad conditions then prevailing in Germany. After 1924, however, the agitations increased again, because, with the introduction of the Dawes Plan, conditions improved in Germany, at a time when they were deteriorating steadily in Austria, as a result of the collapse caused by the over-speculation which took place in the summer of 1924.

[2] *Le Temps*, 17 and 27 May 1925, and the *Deutsche Allgemeine Zeitung*, 26 May 1932.

The new German Nationalist movement may be said to have taken its inception from an unofficial visit paid by Dr. Dinghofer and Dr. Frank, the German Nationalist leaders, to Berlin, towards the end of January 1925. It was then decided to reorganize, on a wider basis, Professor Wettstein's committee, which had been formed in 1919, to work for the removal of the technical difficulties in the way of the *Anschluss*. The new organization, which met for the first time in Vienna on 26 February, designated itself the Austro-German Union, as the Social Democrats' Popular League had become merged in the new organization. Its members were from all parties. Various sub-committees were set up to consider such matters as the unification of teaching in the secondary schools of both countries (higher education

2: MacDonald S-4 (no date) 1946    EK1 Austria EK1

642 668 And large *Anschluss* demonstrations, attended by prominent officials, became increasingly frequent in both countries.[1] Yet, at the same time, Ramek and his Foreign Minister, Mataja, continued throughout the year to pursue a League policy, although his Government depended on the support of the very German Nationalists who were most opposed to this, and who were among the staunchest of the supporters of the Austro-German Union organization.

The one more or less constant desire of this feckless people could thus find no outlet through ordinary political channels. And, since this desire was too strong to be suppressed altogether, expression was given to it in extra-constitutional ways. The movement thus gained that momentum which so often comes to forces which are suppressed. And the methods used accustomed the Austrian people to reliance upon extra-constitutional means for attaining their ends. Thus, as the *Anschluss* movement gained in strength, so respect for ordinary parliamentary government decreased.

642 668 This curious and unsatisfactory situation occasioned much anxiety in France, Italy, and the countries of the Little Entente. But the sharp reactions of the interested Powers towards movements of opinion in Austria and Germany were bitterly resented in both countries. Dr. Mataja protested in May to a representative of *Le Matin* that the Powers appeared to have forgotten that they had themselves guaranteed Austrian 'independence'. It was, he pointed out, a grave psychological mistake to treat Austria as a pawn in the political game, to be bartered about to suit the convenience of Italy, France, and the Little Entente.[2]

As the work of *Ausgleichung* continued, however, it was found that the process of assimilation was not so easy as had been at

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had already been unified), criminal law, agrarian reform on the German model, etc. It was hoped by these means to achieve a union *de facto* between the two countries, which would in time come to be recognized as a union *de jure*.

[1] See *Le Temps*, 6 May 1925, for an account of the Rhineland celebrations held in Vienna on 3 May.

[2] 'Ein Staat, der weder das Gefühl, noch den Stolz seiner Unabhängigkeit besitzt, kann sich nicht lange behaupten.' (Speech reported in the *Deutsche Allgemeine Zeitung*, 26 May 1925.)

first anticipated. It was, for instance, difficult to envisage any satisfactory solution for the problem of Austrian provincialism, were Austria to become incorporated in the Reich.[1] And it was found, on closer examination, that Austrian legislation did differ from German in many important respects.[2] Austrian industrialists were now not slow in pointing out that the structure of German industry was essentially different from that of Austrian.[3] Finally, the Social Democrats, once the most convinced of all the protagonists of the *Anschluss*, became ever more doubtful of the advisability of this policy, as the strength of the Nazi movement in Germany increased.[4]

The announcement of the Customs Union project by Curtius and Schober in March 1931 came therefore as something like a bombshell. But its reception by the great Powers indirectly knocked the last nail in the coffin of Austrian democracy, for, once the Customs Union had been forbidden, everybody became convinced that this was what they had

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[1] Kelsen wrote in 1927: 'Durch die politische u. staatsrechtliche Entwicklung seit dem Umsturz hat sich die Stellung der Länder so gekräftigt, haben sich die durch die Länder-Regierungen repräsentierten politischen Machtzentren in den ehemaligen österreichischen Kronländern so sehr verwurzelt, dass an eine Umwandlung Österreichs in einen Einheitsstaat ernstlich nicht mehr zu denken ist. Ja, man darf sich sogar—so traurig es ist—nicht verhehlen, dass wenn die Umwandlung Österreichs in einen Einheitsstaat . . . die Aufhebung der Länder also, eine conditio sine qua non für den Anschluss diese Bedingung nicht erfüllt werden könnte.' (*Frankfurter Zeitung*, 4 April 1927.)

[2] The German criminal code, for instance, was very much more severe than the Austrian. And German marriage laws were not easily reconcilable with Roman Catholic opinion in Austria.

[3] See *Le Temps*, 16 August 1928, for account of the proceedings at the Conference of Jurists, held at Salzburg in September 1928, to discuss the measures to be taken to unify the laws in both countries, regarding industrial and commercial cartels, etc.

[4] Article by Bauer, *Der Kampf*, July 1927: 'Es wird nicht das Reich Hindenburgs u. des Bürgerblocks sein, in das wir kommen werden.'

On the other hand, right-wing opinion in Austria was coming to view an *Anschluss* with less misgiving. Dr. Seipel, in particular, made speeches about this time which suggested that he had to some extent changed his views. These occasioned considerable misgiving in France, where he had always been regarded as the great supporter of Austrian independence. In September 1928 France issued a sharp warning: 'Un esprit aussi averti ne peut ignorer qu'en tout état de cause, le rattachement de l'Autriche à l'Allemagne, de quelque manière qu'on veuille poser le problème, ce serait la guerre pour toutes les puissances interessées au maintien du statu quo en Europe.' (*Le Temps*, 21 September 1928.)

642 648 really wanted. And opinion was finally disillusioned as to the efficacy of a democracy which was unable to give effect to what was felt to be the unmistakable wishes of the electorate, even when these were legally attainable, as most Austrians believed them to be. The fact that France and Czechoslovakia clearly meant to oppose the scheme, whether it was found to be legal or not; whether Austria and Germany desired it or not; and without any consideration for the possible economic advantages which might accrue to Austria, who was known to be in desperate need, was hardly calculated to strengthen the Austrians' not very fervent belief in the wisdom of constitutional government, of which Czechoslovakia and France were supposed to be among the chief exponents. After the failure of the Curtius-Schober project, subsequent efforts to bring about the *Anschluss* were diverted into extra-constitutional channels.

648 It had been hoped in certain Allied circles after the war that it might prove possible to find a solution to the Austrian problem in the formation of a democratic federation of Danubian states. Such an arrangement, it was felt, would not only help Austria but would provide an effective barricade against possible German aggression in south-eastern Europe in the future.[1] And the economic advantages of maintaining the old free-trade area of the Empire as far as possible intact were felt to be considerable.[2]

It was, however, never found possible to realize such a

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[1] *War Memoirs of David Lloyd George*, Nicholson and Watson (London, 1936), vol. v, pp. 2463 *et seq.*:

'The downfall of Russia had created fresh anxiety for the political future of Europe, and it was feared in many influential quarters that unless some counterweight was established on the Continent to Germany in place of Russia, the future peace of Europe might continue to be precarious. . . . If Austria were prepared to play that role and break with Germany, she would have not only our sympathy, but our active support . . . our object now was to assist Austria to give the greatest freedom and autonomy to her subject nationalities." Mr. Lloyd George envisaged the development of a federation of free peoples in Central Europe, and hoped that in the future other peoples, not at that time a part of the Austro-Hungarian Empire, might be attracted into the orbit of the confederation.

[2] Article 222 of the Treaty of Versailles had provided for tariff agreements between Austria, Hungary, and Czechoslovakia. But when an attempt was made to realize these in 1921, it came to nothing, because of the opposition of Italy.

# CONCLUSION

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IN conclusion, an attempt may be made to sum up very briefly some of the main causes for the breakdown of democratic government in Austria.

The constitution of 1920 undoubtedly played its part, for the omnipotence of parliament which it set out to effect became in fact the omnipotence of the party organizations. Every issue was treated as a party issue, and every aspect of life came to be tinged with political disputes. Parliament, which should have operated to draw the rival groups together, accentuated the differences between them.

It is not suggested that all or even most of the disasters which befell the Austrian Republic can be attributed to defects of the constitution. Constitutions can help or hinder the success of democracy; they do not generally in themselves decide the fate of democratic government. In Austria the unwise provisions of the 1920 constitution probably only served to accentuate difficulties which might well have proved to be insuperable in any case.

The unsatisfactory economic condition of the country, for instance, fostered, as it always must, the growth of extremism on both sides.[1] It prevented the people from developing any feeling of pride in the new Austria, which came to be associated for them with economic misery such as they had never known before.

Again, their experiences in the sphere of foreign policy did nothing to generate an Austrian patriotism in the people. These rather served to indicate to them their helplessness in the face of a hostile world, and the futility of maintaining the façade of self-government when in fact the country was tied hand and foot by its creditors. Self-government was but another name for the administration of the country by the Allies.

Finally, it may be said that so long as democratic government lasted in Germany, Austrian democrats had little to fear. But the combination of the collapse of parliamentary democracy in the Reich with the necessity of turning to Fascist Italy for support against the Nazi terror, led inevitably to the collapse of parliamentary democracy in Austria.

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[1] The more perspicacious of the Social Democrats understood the danger well. (See speech of Seitz at the 1930 Party Conference.)

3: Hiscocks G-4, 5 (1946-1949) 1953 EK1 Austria EK1

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# I

# *The Austrian Problem*

THE popular conception of a Europe divided by the Iron Curtain makes no allowance for the position of Austria. On one side of the curtain are East Germany and the Soviet satellite States, with Berlin heroically maintaining its insularity and faith in the future. On the other side are the West European countries, including Yugoslavia, with Albania as a queer but harmless anomaly left isolated on the Adriatic by Tito's quarrel with Russia. Austria under Four-Power occupation, yet with a Federal Government of its own, does not fit into this over-simplified pattern. The Russian zone of Austria is not behind the Iron Curtain in the same sense as East Germany, but it cannot be included in Western Europe. 648

This aspect of the Austrian question is bound up with the conflict between Russia and the West. It is a post-War development and will become clear as the story of post-War Austria is told. The main problem presented by Austria in 1945 is more fundamental and can be understood only in the light of the country's history between the two World Wars.

When the Habsburg Empire disintegrated in the autumn of 1918, the bulk of its territory and population was taken over by the so-called Succession States. All that were left to form the new Austrian Republic were about seven million German-speaking Austrians and a group of provinces extending from Hungary to Switzerland without national or administrative cohesion. For some months it was doubtful if an Austria would survive at all. From the economic and political points of view there were strong reasons why it should not. 728 642

Economically the new State was an irrational fragment which would have the greatest difficulty in paying its way. In area it was little more than an eighth the size of the old Empire, 433

642 The Republican Constitution approved in October 1922 was itself a handicap. It was drawn up by a coalition government, in which the different views and mutual suspicions of the two parties did not make for clarity or simplicity of structure. Neither side could be described as experts in democratic practice, and the Social Democrats had an exaggerated fear of a strong executive. So the formidable political and economic problems facing the young State had to be tackled by a succession of weak governments which had no power to dissolve Parliament. As the system of proportional representation made for an even balance between the parties, a state of chronic instability prevailed. No real improvement was made in the Constitution until 1929, and even then reforms were limited to those on which the two main parties could agree, owing to the rule that any constitutional change required approval by a two-thirds majority.

665 The situation in the new Republic called for a concentration of political forces. But party feeling was such that the coalition lasted for only two years, and in the autumn of 1920 a long period of bitter and uncompromising conflict began. Attempts made on both sides to renew collaboration all ended in failure, and Dr. Renner, a consistent exponent of co-operation and compromise, had comparatively little influence.

665 Although universal suffrage had been introduced in the
668 Habsburg Empire in 1907, the democratic immaturity of the Republic was revealed by the prevalent political methods. The Social Democrats first tried to establish control of the official army. When this attempt had failed, both parties organized private armies of their own, and thus showed that in the last resort they were prepared to use force as well as argument. The bad habit developed of using mass demonstrations for political purposes, an undemocratic technique, because it appeals to emotions and mass suggestion rather than to reason. Its full dangers became clear under the Nazis, but before then it had done great harm to Austrian political life. A mass demonstration in 1927 led to riots and savage repression and accentuated party antagonism. By 1934 Parliament had

727 the War with only a small amount of damage. They lit a fire on the stage, which they failed to extinguish. The building caught alight and, in the absence of any fire service, was soon completely burnt out. Thus a great cultural centre was destroyed owing to the negligence of a few undisciplined soldiers.

These conditions led inevitably to famine. The normal system of food distribution had been interrupted by the fighting and lack of transport. The refugees had imposed a strain on existing supplies. Fire, destruction, and looting depleted the stores, while the uncertainty encouraged hoarding of what remained.

Finally the administration and public services broke down completely. The Nazi officials in charge of the city government fled with the retreating armies. The greater part of the police and gendarmerie, being Nazis, went with them, and the remainder dispersed to their homes. For some weeks there was neither gas, nor water, nor electricity; no communications and no public transport. Thousands of human corpses were left for days unburied, and the carcasses of horses lay putrefying on the streets. The fire brigade had been ordered to withdraw to the west, and abandoned fire-engines were found lying in the fields between Vienna and Linz, when the need for them in the city was greatest. In April 1945 Vienna experienced what anarchy means in practice.

642 In this crisis it was fortunate that the right men were available and willing to take the initiative in forming some kind of provisional administration. Since the banning of their party in 1934, a number of leading Viennese Social Democrats had been living in retirement, sometimes broken by spells in prison or concentration camps. Among them were General Körner and Dr. Adolf Schärf. On the 6th of April a group of Christian Socialist leaders were suddenly released from prison after spending weeks under the daily threat of death. They included Leopold Figl and Dr. Felix Hurdes. The only official organization that was functioning on the Austrian side was the Resistance Movement which had established its headquarters in

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the Auersperg Palace. The rapid co-operation of these three elements saved the situation in Vienna. Their efforts to set up a temporary municipal government received the full support and encouragement of the Russian military authorities.

The strength and bitterness of political feeling had rendered any effective collaboration between parties impossible in face of the Nazi threat before 1938. But seven years of German occupation had made a difference. In particular the contact that had been established between Schärf and Hurdes during the War proved of great value at this time.

Vienna had been a Social Democratic stronghold under the First Republic. On the 11th of April, therefore, the leaders of the Resistance Movement offered the post of burgomaster to a Social Democrat. On the 17th, after several days of negotiation between the Auersperg Palace and representatives of the party, the choice fell on General Körner, and was approved by the Russian Commandant. Körner was a widely respected figure; a convinced and selfless Socialist, who had been a Chief of Staff in the old Imperial Army and last President of the Republican Federal Council. His deputies were to be a Communist, Karl Steinhardt, and the Christian Socialist, Leopold Kunschak, former Federal Chairman of his party, who had distinguished himself by his staunch democratic loyalty and his consistent opposition to Fascism. Under this satisfactory leadership energetic steps were taken to re-organize the administration of the city. The municipal offices were divided, half going to the Socialists and a quarter each to the Communists and the Austrian People's Party, the newly named party of the Right.

In the meantime, valuable work was being done by Leopold Figl, former Federal Director of the *Bauernbund* or Farmer's Union. Since 1938 Figl had spent altogether sixty-eight months in prison and concentration camps, where he had already revealed the qualities of toughness and courage that later distinguished him as Chancellor. Within a day or two of his final release he began work with a few friends and former associates to re-organize the *Bauernbund* and the provincial

642 government of Lower Austria, shortly afterwards becoming President of the Austrian *Bauernbund* and Governor of Lower
173 Austria. At the same time he improvised measures for the relief of famine in Vienna. The Russian military authorities were persuaded to put two or three dozen lorries at his disposal. The drivers reported to him every morning, and, accompanied by volunteer civilian guides, were sent out into the countryside to collect supplies. In the evening they returned, and the food was handed over to the municipality for distribution. Figl was specially qualified to perform this service, because he had the confidence of the peasants.

While these developments were taking place in Vienna, a
644 series of events had occurred in the country south-west of
645 Vienna which were to have a decisive influence on Austrian history.

In the village of Gloggnitz, at the foot of the beautiful Semmering Pass, Dr. Karl Renner, senior and most respected member of the Austrian Socialist Party, had been living since his enforced retirement from active politics in 1934. In April 1945 he was seventy-four years old, but still strong and active in body and mind. Gloggnitz was not far from Köszeg, the point on the Hungarian border where the Russian troops first entered Austria. It was therefore one of the first villages to be occupied. Dr. Renner, having advised his fellow villagers to stay where they were and not run away from the advancing army, was disappointed at the rough house-searchings to which all of them were subjected. On Easter Tuesday, therefore, two days after the arrival of the Russians, he took his stick and, without bothering to put on a coat, walked down the street in search of the local command post, in the hope of convincing the officer in charge of the villagers' peaceful intentions and preventing further mistreatment. He was directed to the next village, a mile and a half away, and there by a fortunate chance found some officers who knew his name and past record. He was sent by lorry to higher headquarters at Hochwolkersdorf, where he was received with great respect and spent the evening in discussion with senior staff officers.

643 government in the critical spring of 1945. He was sufficiently far to the Left in his opinions to be acceptable to the Russians and yet sufficiently moderate to be respected by all parties. He had been first Chancellor of the First Republic, and therefore had unrivalled knowledge and experience of post-War problems. He had also been President of the Austrian Peace Delegation at St. Germain. Furthermore, he combined strong political convictions with flexibility of method and willingness to compromise, a mixture of qualities which were to prove invaluable during the coming years.

● [642] When he arrived in Vienna, Dr. Renner found, to his
pleased surprise, that the political parties had already combined
in many municipalities, including the capital, to set up pro-
visional administrations. In Vienna General Körner and his
[illegible] deputies were established at the Town Hall. Representatives
of the three parties had joined together to found a new news-
paper, *Neues Österreich*, the first number of which appeared on
the 23rd of April, after the city had been without a newspaper
for three weeks. A first meeting of trade unionists had also
[447] taken place, which led to the foundation on the 27th of April
of an Austrian Federation of Trade Unions on an all-party
basis. Dr. Renner altered his plans to suit the unexpectedly
favourable conditions. Calls to action were not required so
much as leadership, organization, and the definition of
objectives.

643 The Russians installed Renner in a house in the suburb,
648 Hietzing, that was large enough to accommodate his family
and small staff and allow conferences to be held on the main
642 floor. The day after his arrival, the Russian colonel who was
acting as liaison officer arranged for leading personalities from
the different political parties to come and visit him. The first
to arrive was Leopold Kunschak, to whose attitude Renner
attached great importance. He was followed by General
Körner and Adolf Schärf; the Communists, Ernst Fischer and
Johann Koplenig, and others. Negotiations progressed so
rapidly that within two or three days agreement had been
reached on the membership and constitution of the Provisional

Government. On the 27th of April, Dr. Renner as Chancellor 643
designate and his proposed colleagues were received by Marshal 648
Tolbuchin, who in the name of the Red Army gave the 642
Government *de facto* recognition and promised it support.

The same day a proclamation was issued in the name of 642
Renner and representatives of the three political parties, which contained a formal Declaration of Independence. It announced the restoration of the Austrian Republic, the nullification of the *Anschluss*, and the proposed establishment of an all-party provisional government with full legislative and executive authority, subject to the rights of the occupying Powers. On Sunday the 29th of April members of the new Government assembled in the council chamber of the Vienna Town Hall, and, after an exchange of speeches between Burgomaster Körner and Dr. Renner, proceeded, accompanied by the City Senate, to take formal possession of the half-destroyed parliament building nearby. There they were greeted by the Russian Commandant of the city; and Dr. Renner, among the ruins and the rubbish that there had been no time to clear away, reaffirmed his faith in the future of free Austria and the democratic resolve of his colleagues and himself. The ceremony concluded with the reading of a declaration to the people of Austria announcing the establishment of the Provisional Government and exhorting all citizens to play their part worthily in the restoration of the country.

The authority of the new Government extended in fact only 642
to Vienna and those areas of Lower Austria, Burgenland, and 648
Styria that the Russians had already freed. Provisional governments were established in the rest of Austria, as the liberation proceeded, and political authority was exercised either by the military governments of the occupying Forces or by Austrian Provincial Governments set up or approved by them. In Carinthia an all-party Government had been formed on Socialist initiative before the British arrived. In the Tyrol, the Resistance Movement, which had already achieved so much, established an Austrian Provisional Government Committee in the face of Nazi opposition: the American forces, whom the

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Resistance leaders had invited to cross the frontier from Bavaria, were given a formal and enthusiastic welcome when they entered Innsbruck on the evening of the 3rd of May.

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Within a year or two of the end of the War a bitter joke was current in Vienna. Austria, it was said, might possibly survive a third World War, but it would certainly not survive a second liberation. Austrian disappointment was understandable. Dr. Renner pointed out in April 1946 that after the First World War Austria had waited six months for the invitation to St. Germain, and that the peace treaty had followed four months later: that was the treatment given to a defeated country, and it was indefensible that a liberated country should be treated worse. Yet, in spite of everything, the overthrow of the Nazi régime in the spring of 1945 was a liberation. Since then Austria has had a large measure of freedom in which to develop its own way of life. Though the continued restrictions on its liberty cannot be defended, against them can be set the considerable amount of material and moral help the country has received from some of the occupying Powers.

## III

# *Provisional Government*

DR. RENNER'S task was to form an interim government 'broadly representative of all democratic elements in the population'. Those were the terms of the Yalta programme for the liberated peoples of Europe, and it was in that task that the Russians had promised to help him. His first problem was how to make the Government representative under existing conditions. Elections for some months were out of the question. When he arrived in Vienna, fighting was still going on, and, when opposition ceased, Austria was divided into four separate zones under the different armies of occupation. The country was almost entirely without means of communication, and the great majority of able-bodied men of military age were prisoners of war. 643 642

During his first conversations with the Russians Dr. Renner had proposed that, as President of the last National Assembly dissolved by Dollfuss in 1934, he should call together its surviving members or their official substitutes, replacing the Fascist representatives by Communists. But he finally decided against this plan. It would be a complicated, somewhat arbitrary procedure and would take time, when the circumstances demanded that a provisional government should be established immediately. As the main political parties were already re-forming under recognized leaders in Vienna, it would be more satisfactory if the party leaders themselves and their nominees combined to make up a government. Under the Austrian system parliamentary candidates were normally nominated by the party machines, so that the deviation in this case from the ordinary practice would be formal rather than real.

To ensure that the government chosen by this method should really have the confidence of the people great care was 642

642 taken in its composition. No government was ever set up that more closely deserved to be called a coalition. There were representatives of all parties at each level of the administration. Of the thirteen main posts, four went to Social Democrats, four to the Austrian People's Party, three to Communists, and two to non-party men. In addition, in all Ministries, except the Ministry of Finance, two Under-Secretaries were appointed from the parties to which the Minister did not [645] belong. Dr. Renner himself, as Chancellor, was assisted by three Secretaries without portfolio, who with him constituted the Political Cabinet Council. This body, in addition to acting as an inner Cabinet, temporarily formed the supreme executive authority and carried out the duties previously performed by the President of the Republic. Its members, apart from the Chancellor, were Leopold Figl, Adolf Schärf, and Johann Koplenig.

The whole Government, including the Under-Secretaries, formed the Cabinet in the broader sense. From the point of view of taking executive decisions, this body was inconveniently large. But, on the whole, its size was an advantage. As there was no Parliament, it was executive and legislature rolled into one, and had to perform the functions of a Cabinet and of both parliamentary Chambers. It was therefore a good thing that it should be as representative as possible. Confidence in it as a legislative body was further increased by the principle of unanimity that governed its decisions.

643 663 In view of the severity of the party conflict in Austria between the Wars, it may well cause surprise that the three parties should have collaborated so closely and successfully during the seven months' life of the Provisional Government. It was due partly to the personality of Dr. Renner. By sheer force of character and political experience he exercised considerable influence over his colleagues in the Government. He was one of the few Austrian statesmen since 1918 who were able to combine lifelong adherence to a political creed with magnanimity and the ability to look beyond party to the needs of the country as a whole. In 1922 he wrote, 'Passion is

the Austrian State. Certain Communist utterances at the time had a considerable appeal to Austrian sentiment. To the first number of *Neues Österreich* Ernst Fischer, who was the editor, contributed an article entitled 'With United Strength'. It ended as follows:— 665

> And something more is necessary: that we Austrians awake to true national self-consciousness, that we have confidence in our own strength, as we have not always had in the past. . . .
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> Hard work lies ahead of us, but it is work for ourselves. After long years of servitude, we can work for ourselves again, for the happiness of our children, for the welfare of our people, for a free independent Austria. With united strength we will overcome all the accumulated difficulties and make of our homeland what it deserves to be: a land of peace, freedom and creative human endeavour. And when the drab needs of everyday life get a hold on us, our ardent faith in Austria will rouse us again to action.
>
> Our great composer, Schubert, has bequeathed us his ever beautiful unfinished symphony. Everything around us now is unfinished: fragments, ruins, the sadness of destruction. Nevertheless we hear more clearly than ever before the urgent, admonishing notes of the unfinished symphony—Austria. We shall finish it.

It was an inspiring call. But there are no signs now that the symphony will be finished in the way Ernst Fischer had in mind.

The legal situation that faced the Provisional Government when it took office was very complex. The most urgent need was to define the constitutional position of the Government. This was done with the help of two constitutional laws that were approved on the 13th of May and made effective from the 1st of May 1945. The first of these declared that the Austrian constitution of 1929, as it stood on the 5th of March 1933, was again in force, and the second modified the first by stating that until the formation of a government based on free elections the Provisional Government was to exercise the supreme executive power in the State and the legislative authority previously held by the Federal Parliament and the provincial assemblies. It was of immediate importance also to settle the question of the legislation and decrees issued by the 642

642 German Government since the *Anschluss*. They could not be repealed *en masse* without causing great confusion. A further constitutional law was therefore passed, that was also to be effective from the 1st of May, stating that all laws and decrees incompatible with a free and independent Austrian State and with a genuine democracy were annulled. The Government would, after investigation, give notice of those that were invalid. The remainder would for the time being have the force of Austrian law.

With these constitutional acts as a basis, the Provisional Government proceeded with astonishing speed to issue the wide range of laws and decrees necessary for the reconstruction of the Austrian State. When the Government was recognized by the four occupying Powers on the 20th October, over 200 had been promulgated.

643 This remarkable legislative achievement was due very largely to the energy, ingenuity, and legal capacity of Dr. Renner himself. The unanimity rule made the legislative process more difficult. But the Chancellor declared on a number of occasions that he would assume a resolution had been approved, unless its opponents within the Cabinet were prepared to back their opinions by resignation. Being accustomed to night-work himself, Dr. Renner would often call Cabinet meetings for nine o'clock in the evening. The less controversial measures would be taken first, and by about midnight, when most members were suffering from hunger and exhaustion, the more difficult matters would come up for discussion. In those days lack of food was a serious consideration in the lives of all Viennese, and it was customary for wine and sandwiches to be served at the end of Cabinet meetings. Critical faculties were damped, therefore, and the democratic process was considerably eased by Dr. Renner's arrangement. The Chancellor would then sit up far into the night drafting the legislation based on the Cabinet's decisions.

663 The administrative tasks that confronted the Provisional Government were endless. It would take many months before anything like normal civic life could be restored.

Communist control and to emphasize the importance of professional training and experience. At his suggestion, on the 23rd of May, Dr. Pamer, a former Police President, replaced a Communist as Police President of Vienna. Finally, on the 13th of June, the whole force was formally taken over by the Police Directorate, a purely Austrian authority. 625 648

By July the Vienna police were nearly 7,500 strong, though only some 1,000 of them had had previous police experience and many still owed their position to their political opinions. In September, at British instigation, the first meeting of the Allied Public Safety Committee was called. From then on the Austrian police were under Quadripartite supervision, and the three Western Powers were able to counterbalance Russian influence.

Dr. Renner's main concern, after his first few months in office, was to ensure the real unity of Austria. The Provisional Government had announced the restoration of the Austrian Republic and declared itself to be the Government for all Austria. Yet *de facto* its authority still only extended to those parts of the country that were occupied by the Russians; that is to say, Vienna, Burgenland, Lower Austria, and parts of Upper Austria and Styria. The Chancellor's two aims were to obtain the recognition of the Four Powers for his Government and reintegrate the country under its control. The continued division carried with it real dangers. Economically, the position was absurd. In so small a country, each part was dependent on the others for its survival. But the iron of Styria was cut off from the engineering industries of the Russian zone. The salt and meat of Salzburg and the Tyrol could not be brought to Vienna, and the oil, grain, and potatoes of Lower Austria were not available to the West. It had always been difficult to feed Vienna. Yet the task had become impossible in a house, as Dr. Renner put it, 'where the larder was walled off from the kitchen by zonal frontiers'. 642 438

Since 1918 the mutual suspicion between Vienna and the provinces had been a menace to the country as a whole. The interests of the city and the rural areas were utterly different, 369 631

When the Western Commanders-in-Chief first arrived in
727 Vienna, the Provisional Government was not recognized by
648 them, and they did not at first enter into official communications with it. Before long, however, the British and American Commanders interviewed Dr. Renner and apparently satisfied themselves that he was a suitable Chancellor and no mere puppet of the Russians. They were further reassured by the results of the first Provincial Conference.

Two of the conditions necessary for recognition of the Renner Government had therefore been achieved, and the Allied Council proceeded to consider what the relationship should be between the Control Commission and an Austrian Government. At its meeting on the 1st of October it decided to recommend to the Governments of the four occupying Powers that the Provisional Government's authority should be extended to the whole of Austria and recognized, subject to certain conditions. The most important condition was that some functions of government should be reserved to the Allied Council, and this was a point on which the Four Powers could not agree.

On the 13th of September Dr. Renner had sent a note to the
727 Allied Council requesting the unification of Austria, the recog-
648 nition of his Government, and the holding of free elections.
The Allies now decided on recognition without waiting for
.642 agreement on the question of reserved functions. During its meeting on the 20th of October Dr. Renner was summoned and informed of this decision. The main conditions of recognition were that the Provisional Government should exercise its functions subject to the guidance and control of the Allied Council as the supreme authority in Austria; that certain functions of government should be reserved to the Allied Council; that one of the main duties of the Provisional Government should be to hold free elections as early as possible, and not later than the end of the year; that the Provisional Government should be empowered to enact laws applying to the whole of Austria, provided that they were first submitted for approval to the Allied Council, and that nothing in the condi-

3: Hiscocks G²4, 5 (1946-1949) 1953 EK1 Austria EK1

727 tions should affect the validity of any Military Government
648 legislation then in force or afterwards enacted. The Allied
642 Commission also proceeded with the task of examining, and where possible approving, the laws and decrees issued by the Provisional Government since the 1st of May.

The formation of the Provisional Government in April had been Dr. Renner's first great service to Austria since his return to active politics. The Allied recognition of his Government marked the second stage of his achievement and was of incalculable importance to the future of the country. Without it the danger still remained that Austria might suffer lasting division and the fate of Germany. It is not surprising, therefore, that the British officer who went to fetch the Chancellor to the Allied Council meeting on the 1st of October noticed an unaccustomed nervousness on the part of this experienced, sophisticated, but deeply patriotic statesman.

666 The main task that faced the Provisional Government, after it had been recognized, was the organization of elections. An electoral law, after amendment by the second Provisional Conference, had been passed by the Government on the 19th of October and approved by the Allied Council on the 30th. It was based on the electoral law of the First Republic, modified to disfranchise Nazis and candidates for the Nazi Party, unless they could prove they had suffered political persecution under the Nazi régime. On the 27th of October the Government, in the name of all three political parties, issued an appeal to the Austrian people, calling on them in the traditional manner, as befitted a civilized and freedom-loving people, to cast their votes for one of the three democratic parties.

On the 25th of November the elections were held. They passed off in a most orderly manner, 93 per cent of the electors casting valid votes. It was generally agreed that the Austrian people were able to vote freely in accordance with their political opinions. By the end of the month no charges of fraud nor complaints from either parties or individuals had been lodged regarding the election. In view of the nature of some of the elections that took place in Central and Eastern

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300 to the Russians, and he had shown the Russians to Central Europe. The first error could be rectified by ensuring that the occupying troops did not stay long enough in Central Europe to feel at home. But the results of the second mistake will take many years to eradicate.

In Austria, in the spring of 1945, the Russians had the game in their hands, and from then on they played it very badly. A great opportunity was missed, as in the rest of the world, where a moderate and enlightened Communist policy, following Russia's heroic struggle against Germany, would have been irresistibly attractive to millions.

642 The results of the election became known on the 24th of November. Two days later the Provisional Government resigned. The Political Cabinet Council accepted its resignation, entrusted it with the temporary administration of public business, and at the same time called on the Austrian People's Party to nominate someone to form a government. The choice fell on Leopold Figl, who had for some months been Chairman of the party and, like Dr. Dollfuss, owed his influence in the party and the country to his work for the *Bauernbund*. During the election campaign all three parties had declared that they were in favour of further collaboration after the election. A Coalition Government was therefore formed in which there were eight representatives of the People's Party, six Socialists, and one Communist. The approval of the Allied Council was given on the 18th of December.

646 On the following day the new National Assembly met for

643 the first time, and Dr. Renner presented a report on the work of the Provisional Government. At the same time, the Second Chamber, known as the Federal Assembly, which had been elected by the Provincial Chambers according to the constitution, held its first sitting. On the 20th of December the two Houses met in joint session and elected Dr. Renner Federal President by 204 votes out of 205, one member abstaining. The new President's first duty was to swear in the members of the new Government.

## IV

# Coalition and Quadripartite Control

645 LEOPOLD FIGL, the new Chancellor, was very different from his predecessor. He was considerably younger, and he lacked Dr. Renner's intellectual distinction and breadth of background. Yet the two men had certain qualities in common that are of importance in a prime minister: they both possessed the tact and magnanimity that enabled them to manage their colleagues and rise to the level of great responsibilities at a critical time. Figl was suited by nature to follow Renner's example of tolerance and co-operation. This was revealed in the skill with which he formed the Coalition and in his success in remaining head of it for more than seven years.

The offices in the new Government were distributed wisely, so that the two main political parties were satisfied with the result. Dr. Schärf, the Socialist leader, became Vice-Chancellor. The economic appointments were divided. The People's Party provided the Foreign Minister in Dr. Gruber and the Minister of Education in Dr. Hurdes, while the Socialists, Helmer and Maisel, took the Ministries of the Interior and Social Welfare, the latter being a post to which their party attached special importance.

The results of the election did not entitle the Communists to a seat in the Cabinet, but they were given one in order to propitiate the Russians and rally forces in the emergency. A Communist, Dr. Karl Altmann, was therefore made Minister of Energy and Electrification, an appointment especially created for his and his party's benefit.

642 From the constitutional point of view, the Provisional Government had been only a temporary expedient to tide over the transitional period until free elections could be held. After the elections, in order to legalize the position, legislative acts of the previous seven months had to be confirmed. One of the

first decisions of the new Parliament, therefore, when it met 642 on the 19th of December, was to adopt the constitution of 1929. Dr. Renner, in his New Year's Eve broadcast to the Austrian people, emphasized that the laws issued by his Government had been dictated by the force of circumstance and must now be verified by the people's representatives.

There were compelling reasons for having a coalition. In times of great emergency it is a healthy democratic instinct that brings political parties together to work in the common cause. Britain resorted to coalitions in both World Wars, and the First Austrian Republic had done so in the first two years of its life. The problems facing the country in 1945 were as difficult, if not so fundamental, as those that presented themselves in 1919. There was still an acute shortage of food and fuel. Although the country had gained a measure of unity since the recognition of the Central Government by the occupying Powers, the zonal frontiers remained, and each Power had special rights in its own zone. Moreover, seven years as part of the German Reich had left Austria no contacts of her own with the outside world. While his Government [185] was still in process of formation, Leopold Figl summed up its main tasks as ensuring the necessities of life for the people, creating a unified Austria, and restoring her relations with foreign countries, especially with her neighbours. As gradual progress was made in the solution of these problems, a fourth objective of increasing urgency emerged which held the two main parties together in joint endeavour: the signature of a State treaty that would bring an end to the occupation and re-establish Austria as a sovereign State.

Though these exacting tasks were sufficient to justify the existence of a coalition, there were other reasons for it which arose out of the nature and previous record of Austrian democracy.

The elections had shown that the two main political parties 665 were closely matched in strength. The probable alternative to an alliance between them, therefore, would be tense political strife, which, in the circumstances of national emergency, 665 would be suicidal. In 1950, after nearly five years' experience of the Coalition, Oskar Pollak, the Socialist editor of the *Arbeiter-Zeitung*, a man of the strongest party convictions, wrote:—

> When a democratic country owing to the class division of its people . . . is split into two great camps, two parties of approximately equal strength, this country cannot be governed by democratic methods against the will of one of the two parties. . . . History has shown that every attempt to rule such a country through one half of the population against the wishes of the other must lead to the jeopardizing and even to the annihilation of democracy.

Pollak, of course, had in mind the history of his own country between the Wars.

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Memories of the bitter political conflict and division between 1920 and 1938 had a powerful influence on the course of post-War politics. After the First World War the coalition experiment had lasted for only two years, and it was clear in retrospect that this had been a mistake and that the statesmen who had worked to renew collaboration had been on the right lines. A particularly sinister aspect of Austrian party cleavage was the geographical aspect that has already been mentioned, Vienna since 1918 having been predominantly Socialist and the provinces mostly Right Wing in sympathy. Giving free rein to political rivalry, therefore, would have involved accentuating the division between the provinces and the capital that was already a serious danger.

Finally, the Coalition solved, as far as was possible, the problem of maintaining good relations with Russia and the other occupying Powers. Russian disappointment with the election results went deep, but it was some compensation that the Communists were given not only a seat in the Cabinet but membership of the parliamentary Main Committee as well. Figl described his new Government diplomatically as a 'government of concentration', and this point was seized on as something of a forlorn hope by Ernst Fischer, who in an article in *Neues Österreich* on the 18th of December 1945 emphasized the difference between a mere parliamentary

'coalition' and a 'concentration of democratic forces' that 665
applied to every level and category in the life of the State.

As the Austrian Coalition has survived for so long, it is 642
important to understand its nature. It differs considerably from coalitions to which other democratic countries are accustomed, and the difference results from the special characteristics of the Austrian party system and the Austrian form of democracy.

In France the numerous political parties are distinguished 665
from one another in some cases by almost imperceptible shades of political opinion. In the United States the two great political parties could simultaneously hope to win Eisenhower as their leader; while in Britain moderate leaders from opposite sides, like Baldwin and MacDonald, Eden and Bevin, can follow each other with little noticeable break in continuity. But the record of the Austrian Republic has, on the whole, been very different, though the contrast is in process of modification. On the one side are the Socialists, with their radical idealism, their materialism, and their admiration for the Marxian analysis; on the other side, the Right Wing, with its Catholicism, its respect for tradition, and its varying forms of nostalgia for the past. They differ from each other not only in temperament and in their views on the speed and method of political advance but, in many cases, in their whole attitude towards life and its purpose and towards the nature of society and the State. This fundamental contrast in *Weltanschauung*, or philosophy of life, has been one of the main reasons for the stability of party loyalties in Austria through the years. People are much less likely to change their allegiance if religious conviction and deep-rooted social attitude are involved, than if the alteration merely concerns the method of approach to a broadly similar ideal.

The contrast is sustained, and tends to be increased, by the 665
dominance and rigidity of the party organizations in Austrian
politics. Voting is according to the system of proportional 666
representation and the party list, the whole country being divided into no more than twenty-five electoral districts or

out of political life by the ruthless working of the party machines. With a measure of justice Christian Socialists accused Social Democrats of putting party before country; of obstructing legislation during their long period in opposition, and of seeking to establish something like a dictatorship of the proletariat. With as much justice the Socialists accused the Right-Wing parties of the arrogant assertion of power; of undermining the democratic system, and finally of dispensing with Parliament and establishing a form of government on the Fascist model. 665

Such a party system and such a background of party strife mean that a coalition government in Austria is a very different thing from a war-time coalition in Britain or a working group of political parties in France. The Austrians learned much from the pre-War tragedy and much from the Nazi ordeal. But political memories are retentive and party differences deep-rooted, and the recollection of the between-War period, though salutary as a warning, still hangs like a curse over Austrian political life. There are very few Austrians who can speak or write of the time with anything approaching objectivity. It is therefore hardly surprising that the Coalition has had its ups and downs. There have been occasions in its existence when it has seemed on the verge of collapse. Yet its very precariousness has increased its value to the country. If politicians have a tendency to fly at one another's throats, it is all the more important, in a time of national emergency, that they should be held together to serve the common cause. 642 665

The inherent tension in Austrian political life has affected the nature of the Coalition in one particular way. There has been a common acceptance of the principle of what is called *Proporz*; that is, the principle that the proportionate strength of the parties in Parliament should be reflected not only in the allocation of Cabinet seats but in the distribution of public offices in general. Each party claims a right to a share of representation in the policy-making governmental committees, the boards of directors of nationalized industries, and even in administrative and industrial appointments at a lower level. The system has

642 665 its advantages in a coalition where party rivalry runs high. Occasions for friction are reduced to a minimum, because every party has its due share of influence. Ministers can surround themselves with officials of their own way of thinking in the knowledge that their colleagues belonging to other parties will do the same. On the other hand, in the long run the system has serious disadvantages as well. It is the mathematical *reductio ad absurdum* of the over-organized coalition. A great strain is placed on political sincerity when party membership is known to be the key to office. Political opinions come to be the main qualifications for appointments in which technical knowledge and experience should count for most. Above all, the party aspect of political life is continuously emphasized, when it is most important it should be played down, and an atmosphere of huckstering prevails in the appointment to offices where ability and devotion to the State service are the qualities most required.

Nevertheless, in spite of weaknesses, the Coalition has succeeded and survived. On the whole, it has been a healthy influence in Austrian political life. Its dangers have been less serious than unbridled political conflict. In 1945 eleven years of authoritarian government had created a gap in Austrian political experience. Some of the new leaders had had no parliamentary experience. Those who had were mostly old and nearing the end of their careers. The new generation of politicians, however, is accustomed to compromise and collaboration. It has grown up under a Chancellor and two Presidents who put party second to the State. It has been schooled by external pressure to appreciate the value of the heritage that all political parties share.

727 642 The Coalition, however, has never had full responsibility for the government of Austria. It has been subject continuously to the authority of the Allied Control Commission made up of the four occupying Powers.

The system of supervision established on the 20th of October 1945, when the Allied Council recognized the Provisional Government, lasted for just over eight months. It involved

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very close control. Although the Allies could not agree on the functions to be reserved to the Council, the provision that all laws must be submitted for the Council's approval gave it the last word, so far as legislation was concerned. By the end of January 1946 nearly 300 laws and decrees of the Austrian Government had been considered and acted upon by the Allied Council, aided by its legislative committee. Of these the great majority were approved, though some were amended and a few rejected outright. A significant case of the Council asserting its authority was the demand in November 1945 that all laws and orders of the Provisional Government dealing with military matters should be annulled. The Government Declaration of the 27th of April had mentioned a modest defence force, and Dr. Renner's original Cabinet had included an Under-Secretary for Army Affairs.

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This state of tutelage and subjection was tolerable only as a temporary expedient. It was in flat contradiction to the declared intentions of the Allied Powers. At Moscow, Churchill, Roosevelt, and Stalin had described Austria as a victim of Nazi aggression. At Yalta they had declared their intention of restoring to such victims their sovereign rights and self-government in accordance with the principles of the Atlantic Charter. The Austrian Government had every right to demand that this decision should be carried out, and the occupying Powers themselves would reveal the sincerity of their diplomatic convictions by the efforts that they took to implement it.

During the spring of 1946 a series of powerful pleas were made on the Austrian side for revising the system of Allied control. On the 5th of April Dr. Renner gave a lecture to the Austrian League for the United Nations entitled 'Austria, St. Germain, and the Coming Peace'. In it he made the comparison between Austria's position after the two World Wars to which reference has already been made. Two weeks before, Karl Seitz, the veteran Socialist leader, made a speech in Parliament in which the authentic voice of democracy was heard. He spoke of the power of veto in parliamentary history

642 and the hesitation of even kings and emperors to make use of
727 it, because it brought them into conflict with the people. In Austria, however, laws now passed by the freely elected representatives of the people were subject to the sanction of authorities outside the State. After a great war against Fascism in Europe they could be proud that Fascism had been driven out, but the Allied champions of democratic rights were now claiming the right to approve laws passed by the Austrian Parliament. He ended:—

'We appeal to the democratic sense of the English, French, Russian and American peoples. We appeal to them: safeguard your own dignity by safeguarding the dignity of this small Austrian State and its parliament. . . . Democratic countries of Europe: protect your most important and your greatest idea, protect Democracy.'

727 Shortly afterwards the Vice-Chancellor, Dr. Schärf, accom-
648 panied by Dr. Pittermann, a fellow Socialist and member of Parliament, paid an unofficial visit to London, where they met members of the British Labour Party. Schärf took advantage of the opportunity to impress on Ernest Bevin the urgent need to improve the conditions governing the occupation of Austria. The British Government were willing listeners. The four occupying Powers were bound by their agreement of the 4th of July 1945 to decide on the new relationship that should exist between themselves and the Austrian Government after the elections had taken place. Even before the elections were held, in November 1945, the British Element of the Control Commission in Vienna had started work on a draft agreement, and early in 1946 Allied quadripartite discussions on the British draft had begun. Months of hard negotiations followed, and by June a revised occupation statute was ready for signature. It was perhaps fortunate that during that month the British, who had taken the initiative in the matter, occupied the chair in the Allied Council. The persuasiveness of Lieut.-General Steele, the new British Commander-in-Chief, overcame the final minor differences.

727 The New Control Agreement was signed by the occupying

The New Control Agreement was signed by the occupying Powers on the 28th of June 1946. It is a document of great importance. Following the recognition of the Provisional Government in October 1945, it was the next great step forward in the rebuilding of the new Austria, and with minor modifications it has determined the nature of the post-War régime in Austria ever since. 727 642

According to the agreement the main structure of the Allied Control Commission remained unchanged. It was to consist of a Council, an Executive Committee, and departmental staffs. But the members of the Allied Council were now described as High Commissioners, and it was laid down that the departmental staffs were to be organized in divisions, corresponding roughly with the Ministries in the Austrian Government. The Allied Council had powers of supervision over the whole administration, but was to exercise it normally through the Central Government or the Austrian authorities concerned. The Commission could take measures to deal directly with the following reserved subjects: demilitarization; war criminals; security of the Allied occupying Forces; the care and restoration of the property of the Governments and citizens of the United Nations; disposal of German assets; the care and movement of prisoners of war and displaced persons, and the regulation of travel in and out of Austria, until Austrian controls could be set up.

In general, the authority and responsibility of the Austrian Government and civil authorities were substantially enlarged. The powers of the Central Government extended throughout the whole of Austria, subject only to the obligation to carry out the directions of the Allied Commission and to the reservation of the above subjects. Austria officially became an economic entity again. The function of the zonal boundaries was reduced to fixing the spheres of authority of the four occupying Powers, and in the provinces direct control of the military governments was replaced by watching briefs to ensure that the orders of the Central Government and the Allied Council were obeyed. Provision was made for the establishment of an Austrian customs and frontier control

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administration and for the transfer to it as soon as possible of such functions as would not interfere with the military needs of the occupying forces. The civil administration of the city of Vienna was to be handed over by stages from the Inter-Allied Command to the municipal authorities.

The legislative power of the Austrian Government was greatly increased. It was still obliged to submit all legislation to the Allied Council, but only constitutional laws required the Council's unanimous approval. In the case of all other legislative measures the rule applied that they went into effect if within thirty-one days the Government had not been informed of an Allied veto. As the veto had to be unanimous, this rule ensured that the great majority of laws became effective, even if they met with Russian opposition.

Agreements between the Austrian Government and one of the four occupying Powers did not have to be approved by the Allied Council, but the Council had to be informed of their existence. The Government was also allowed to establish diplomatic and consular relations with Governments of the United Nations without approval of the Council. The establishment of relations with other Governments was permitted, but only with the Council's consent.

In view of the persistent efforts of the Russians later to obstruct the legislative activity of the Austrian Government, it is surprising that they should have ever agreed to an arrangement that considerably increased the Government's legislative powers. It may be that they had not entirely given up hope of gaining control of Austria by the technique of democratic solidarity and national concentration. It is possible that Stalin was in favour of greater autonomy for the country where he himself had studied the problem of nationality, and that afterwards he changed his mind. But it is most likely that the Russian negotiators did not understand the implications of what they were doing. The original British idea was that all Austrian legislation should take effect that was not subject to unanimous Allied veto. The Russians objected to this. So a compromise was proposed, by which constitutional laws were put in a separate category. It is highly probable that the 642 Russians did not fully appreciate the difference between con- 727 stitutional and ordinary laws and imagined that much of the legislation they were likely to disapprove would fall into the constitutional class.

The last article of the New Control Agreement stated that within six months of signature the Four Powers should start discussions regarding its revision. Yet they have not so far succeeded in agreeing on anything to take its place, and it has remained the statutory basis of the Allied occupation ever since. The day after the agreement was signed, in a special Cabinet meeting, Figl summed up the Austrian attitude by saying: 'To our thanks to the Allies for the New Control Agreement we add the request that they will show us further proof of their confidence and give our country full freedom.' An arrangement which was welcomed by the Austrians in 1946 has, as the years have gone by, become increasingly the formula of their country's servitude.

Because the general pattern of Allied occupation in Germany 727 and Austria was originally similar, with the Russians occupying the eastern parts of both countries and the capital in each case an isolated island in the Russian zone, there has been a widespread tendency to identify, and therefore confuse the situations of the two countries. Actually their positions since October 1945 have been fundamentally different. There has never been a government for all Germany since the War. When differences between Russia and the West led to the union of the American, British, and French zones to form Western Germany, its capital was established not in Berlin, but in Bonn. In Austria, on the other hand, there has been a Central Government in Vienna since the four Powers recognized the Provisional Government on the 20th of October 1945, and since the 28th of June 1946 it has had considerable, if restricted, powers. The Austrian Government is subject to the supervision of the Allied Control Commission, and the system of quadripartite control, after a fashion, does work. There are frequent differences between the Western Allies and

665 more moderate adherents by merging with the Communists to form the 'People's Opposition'.

666 It was rightly held in Austria and abroad that the elections were a triumph for the forces making for stability and moderation and that the Austrian people had again expressed their confidence in the Coalition. The Federal President called on the People's Party to nominate their candidate for the Chancellorship, and Dr. Figl was asked to form another coalition government.

665 So far from solving the crisis, however, the result at first intensified the deadlock. The Socialists claimed that the electorate had pronounced in favour of their policy and demanded increased representation in the Government. The People's Party maintained that it had yielded too much influence to the Socialists in the past and that, as the parties of the Right had obtained 200,000 more votes than those of the Left, the Socialist claim was unreasonable. The party declared itself in favour of a three-party coalition, including the Union of Independents. To emphasize the parliamentary strength of its position it published a working programme that it had agreed to jointly with the Union of Independents.

642 Following weeks of hard bargaining Dr. Figl gave up his attempt to form a government just one month after the elections. The People's Party Executive unanimously chose their chairman, Julius Raab, as his successor. On the 1st of April, Raab succeeded in forming a coalition government consisting of the Socialists and People's Party only. In it the Socialists obtained two junior Ministries in addition to their previous representation. The new Coalition was based on a two-party understanding less comprehensive than in the previous post-War Governments. For example, the party truce did not extend to the provinces and the municipalities. It was significant that a provisional compromise budget that had been agreed on in the autumn of 1952 was extended to the end of the year.

During the course of the negotiations President Körner in a public speech made a surprising statement in which he implied

that the Union of Independents was not a '*staatsbejahende*' 642
party—that is to say, a party taking up a positive attitude towards the State. Out of deference no doubt to the President's age and past record, the two main political parties made little of this constitutional lapse. But the Union of Independents, with good reason, repudiated the statement emphatically.

Outside the People's Party Executive the full circumstances 643
in which Figl gave way to Raab can at present only be a matter of conjecture.[1] But the nomination of Raab indicated the direction in which events were moving. The new Chancellor is a leading industrialist who was a member of Schuschnigg's Cabinet just before the *Anschluss* and has been President of the Austrian Business-men's Association and of the Chamber of Commerce and Trade since the War. He became Chairman of the People's Party during its reorganization after the presidential election. While the occupation lasts Austria still needs a coalition, especially since Stalin's death has renewed hopes that a treaty will be signed. But Raab is a typical Right-Wing leader and temperamentally less fitted for compromise than his conciliatory predecessor. His appointment marks a stage in the return to normal party politics.

From the point of view of Austrian democracy the political 642
truce has already lasted too long. The discipline and restraint a coalition imposes are a good influence from time to time, but over a period of years they tend to be transformed into less desirable qualities. Compromise, when it becomes a habit, means loss of vitality, and in the long run no political party can survive without the stimulus of competition.

Yet the Coalition has served Austria well, and in a complex and critical situation the country has been fortunate to have it. It has given stability and continuity to Austrian policy at a time when weakness or vacillation might have been fatal. Much credit is therefore due to those chiefly responsible for its survival; to President Renner, President Körner, and Dr. Figl himself.

Since Austria became a republic no statesman has approached 643

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[1] The above was written on the 7th of April 1953.

had achieved considerable success. The currency had been 652
stabilized. Between December 1951 and December 1952 wholesale prices had dropped 6·4 per cent and the cost of living 1 per cent. With unimportant exceptions wages had remained constant. Total savings during 1952 amounted to over a billion schillings, compared to the 77 million in 1951. Although the gross national product only just kept up to the level for the previous year, the foreign trade position improved substantially. Figures available in February 1953 showed a drop in the balance-of-trade deficit from 4·3 billion schillings in 1951 to 3·1 billion in 1952, while the balance-of-payments deficit fell from $176 million to $100 million.

The Ministers of Trade and Finance deserved great credit for this achievement. But it must be remembered that they were members of a coalition government and that the policy of stabilization had begun before their appointment. Furthermore, the policy depended for its success on the voluntary action of both industrialists and trade unions in keeping down prices and wages.

During the election campaign a large measure of agreement 464
on economic and financial policy was revealed between the
Socialists and the People's Party, but the gap between the two 665
points of view, which had made elections necessary, could not be closed entirely. The serious deterioration in the employment situation accentuated the differences on this vital issue. At the end of 1952 there were nearly 100,000 more unemployed than there had been in December 1951, and throughout 1952 the average number of unemployed had been 158,000, compared with 117,000 the previous year.

The deadlock that followed the elections and delayed the 642
formation of a new Government for more than five weeks was
proof of the stubbornness of the differences. The replacement 665
of Figl by the industrialist Raab made it clear that a long-term compromise could not be expected: the Coalition survived, but for external, not for internal reasons. It was, nevertheless, encouraging that Austria's two main political parties should have

● 642 revealed such strong convictions about the country's economic
665 future. The contrast between this attitude and the listless indifference that was common in the immediate post-War years was one practical indication of the achievement of Marshall Aid.

State, when once their independence had been restored. If Austria's hopes of solvency were well-founded in 1937, the development of her oil-fields and hydro-electric power since then have placed their realization beyond all doubt, provided she is free to manage her own affairs. 433

Like the Nazi aggression before 1938 and the German occupation that followed, Russia's economic and political obstruction since the War has stimulated Austrian patriotism. Austria's courage and patience under great provocation, her Government's correct attitude towards the Soviet authorities, combined with insistence on its rights, have won general admiration. So her greatest disappointment since the War has, from the long-term point of view, been turned to her advantage, and has played its part in the harsh process by which the Republic has been welded into a unit. 186

Above all, the Coalition Government's record has had a decisive influence. Its problems have been exacting, in some cases insoluble, and it has been a difficult team to manage. Yet on the whole, in face of great difficulties, it can claim to have been one of the most stable and successful governments in post-War Europe. The contrast between political life in the First and Second Austrian Republics could scarcely be more marked. In the one case there was bitter rivalry, mutual intolerance, and frequent changes of government; in the other case co-operation, continuity, and a readiness to compromise for the common good. In eight years Austria has made great progress towards democratic maturity, and the lessons of the inter-War years have been well learned. 642

But their newly developed patriotism and self-confidence have left Austrians under no illusions. They are aware of their limitations, and they realize that political nationalism is out of date. The American journalist who described Dr. Figl as the successor of Don John of Austria, the last knight of Europe, who turned back the Turks in 1571, was read with a smile in Vienna. Austrians think that their main contribution to the world will always be cultural rather than political and will be based on the spirit, the intellect, and the preservation of 648

648 728 on March 15, 1938, as null and void and further expressed the desire to see a free and reestablished Austria. This accomplishment would enable the Austrian people, as well as neighboring nations confronted with similar problems, to find that political and economic security which is the only foundation of a lasting peace.

The powers augmented this declaration at the Conference of Yalta (Crimea conference of February 4 - 11, 1945) by agreeing to promulgate the reinstatement of sovereign rights as well as self-government for all peoples deprived of such rights by aggressor nations. To implement the practical exercise of these rights, liberated European nations should be assisted in the amelioration of want and need as well as in the creation of a (provisional) governmental authority in which all democratic population elements were to be represented on a broad basis, and which should in turn be required to establish, as soon as possible, a government, chosen by free elections, acting in accordance to the will of the people.

642 727 Based upon the repeated declarations of the powers the chairmen of the three political parties proclaimed the Second Republic of Austria on April 27, 1945, immediately after cessation of hostilities in Austria. In accordance with Article I of this proclamation the "democratic Republic of Austria" was reestablished and to be organized similarly to the constitution of 1920. Article II provided that the annexation forced upon the Austrian people in 1938 was to be considered as null and void. Therewith Austria joined again the family of European nations.

The first legislative acts of the provisional government concerned the framework of the constitution, the reestablishment of the legal system and the appointment of authorities. On the strength of the "Verfassungsüberleitungsgesetz" (i.e., the law to reestablish Austrian enactments for German ones), Austria was fundamentally reestablished as a democratic republic, reverting to the provisions of the federal constituion of 1920, as amended in 1929. Simultaneously a provisional constitution was agreed upon which regulated the government. In essential stipulations it conformed with the constitutional law of 1929. The "Behördenüberleitungsgesetz" (i.e., the law to reestablish Austrian authorities) was enacted to establish a new Austrian authoritative apparatus. It stipulated the definitive substitution of administrative and judicial instruments of the German Reich by those of Austria as of July 20, 1945. This was followed by the "Beamtenüberleitungs- und Staatsbürgerschaftsüberleitungsgesetz" (i.e., a law reestablishing the Austrian status of employees and citizens), the reorganization of municipal law as well as the "Nationalsozialistengesetz," known as NS, the law prohibiting national-socialism (Verbotsgesetz 1945 and the Wirtschaftssäuberungsgesetz). 642 727

Following the arrangement agreed upon by the powers, Austria was divided into four occupation zones and their divisioning settled during August, 1945. The supreme occupation and control authority is the Allied Commission for Austria in Vienna which retained a number of sovereign rights, but which little by little after 1946 transferred substantial shares of authority to the Austrian Federal Government. 727 631 642

At the Potsdam Conference (protocol of August 2, 1945) the powers, examining the question of extending the executive power of the provisional government (Dr. Renner) which up to then covered only the Russian occupation zone, recommended the extension of this power to cover all Austria. 728

In the federal provinces, meanwhile, provisional provincial governments were established and the federal provinces constituted, permitting the functioning of a provincial legislature within the jurisdiction of the constitution of 1929. At the same time the reestablishement of the Verfassungs- und Verwaltungsgerichtshof (i.e., a constitutional court) was prepared. On October 20, 1945, the Allied Commission for Austria finally authorized the provisional federal government, to enact laws for all of Austria (which, however, first had to be submitted to the Allied Commission for approval). 631

The elections of November 25, 1945, which had been arranged by the election proclamation of the provisional government, brought about the legalization of the endeavors of the provisional government, which resigned on November 28, 1945. 666 642

1945 Election: Tally of Votes and Seats

| | | | |
|---|---|---|---|
| ÖVP (Austrian Peoples Party) | 1,588,444 votes | 85 seats | 666 |
| SPÖ (Socialist Party) | 1,428,441 votes | 76 seats | 646 |
| KPÖ (Communist Party) | 174,387 votes | 4 seats | |
| | 3,191,272 votes | 165 seats | |

642 On December 3, 1945, a committee of the political parties entrusted Secretary of State Figl with the formation of a government, which the Allied Commission approved on December 18, 1945. On December 20, 1945, a session of the Federal Assembly (Nationalrat and Bundesrat) with a vote of 204 out of 205 elected Dr. Karl Renner to the presidency. He accepted the office for the term of six years.

642 646 The new federal government as well as the presidency were recognized by notes of the various powers although these notes showed deviations in texts. Thus the first phase of the constitutional reestablishment of the Second Austrian Republic was concluded. The federal government could proceed with the task of solving the most important economic problems.

### 2. The Situation after the Cessation of Hostilities and the First Economic Reorganization Measures, 1945-1947.

727 The reestablished Second Austrian Republic faced a great economic task. The losses and damages from the war destroyed almost a quarter of the total national capital which had amounted to about 38 billion schillings.

364 In Vienna alone, 37,000 apartments were completely destroyed and 50,000 partly destroyed, while 25,000 were less severely damaged. Aside from extensive destruction of raw materials was the loss of machinery through dismantlements, especially in the eastern part of the country after 1945, which caused deficiencies in extremely valuable production material amounting to at least 1.2 billion RM (at prices fixed as of 1940). Plants of the electric, vehicle, machine, iron and metal industries, and steel mills lost more than 46,000 machines. This meant that in some instances, the combined loss of the war and postwar period amounted to 80 percent of the [433] machines and equipment. These deficiencies were all the more burdensome since the destruction and the removal of the production means led unavoidably to severe disturbances in the general economic scheme.

[162] Austria also suffered substantial losses in human lives. Out of a population of 7,000,000, the number of dead or missing totalled 350,000 and the wounded 170,000. These losses were mainly from the ranks of the able-bodied age groups (13 percent).

*October 20th, 1926. Seipel's fourth term of office as Chancellor.*
*November 3rd, 1926. The "Linz Programme" of the Social-Democratic Party.*
*July 14th, 1927. Verdict of "Not Guilty" in the Schattendorf Trial.*
*July 15th to 17th, 1927. Serious disorders in Vienna. Burning of the Palace of Justice.*
*March 11th, 1928. First demonstration of the Heimwehr in an industrial area.*
*October 8th, 1928. Simultaneous demonstrations of the Heimwehr and the Republican Schutzbund in Wiener Neustadt, separated by a cordon of the Austrian Army.*
*September 16th, 1929. Failure of the Bodencreditanstalt.*
*October 27th, 1929. First demonstration of the Heimwehr in Vienna.*
*December 7th to 10th, 1929. Austrian Constitution changed.*
*May 18th, 1930. "Korneuburg Oath" of the Heimwehr.*
*November 9th, 1930. Last parliamentary elections before the Second World War.*
*May 12th, 1931. Government action to save the Creditanstalt.*
*September12th to 13th, 1931. Attempted Putsch by the Styrian Heimatschutz.*
*May 20th, 1932. First Dollfuss Government.*
*September 5th to 20th, 1932. Conference in Stresa.*
*March 4th, 1933. Resignation of the three Presidents of Parliament. Crisis for democracy.*
*March 7th, 1933. Prohibition of all public meetings. The freedom of the press curtailed.*
*March 18th, 1933. The German Cabinet Minister Frank threatens Austria on behalf of the Nazis.*
*March 30th, 1933. Republican Schutzbund disbanded.*
*May 1st, 1933. The Socialist May-Day celebrations forbidden.*

In the meantime history had taken its inevitable course. The black and yellow flag had been hauled down in Austria and a disinherited generation hoisted the red-white-red tricolour over the ruins of the Hapsburg Empire. While in Vienna the Republic was proclaimed on the 12th of November, 1918, and the principle established that in future all power would emanate from the people, the Succession States—Czechoslovakia, Hungary, Poland and Yougoslavia—had hastened to invoke the principle of self-determination in order to declare their independence, and thus to burden the remaining rump of Austria with all debts and obligations.

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To this country of barely seven million inhabitants, whose frontiers had been torn up by violence, the remnants of the army now came streaming back—officers from garrisons in Hungary and Croatia, administrative clerks from Cracow and Laibach, ship-builders from the docks of Pola and Trieste, merchants from Belgrade and the harbours of the Adriatic, teachers and doctors from the Ukraine and the Carpathians, professors from the German University in Prague, mining engineers from the Upper Silesian collieries, governors' staffs and employees from the vast forest districts, judges, diplomats, ambassadors, builders, foremen, railwaymen—all streamed back into the mutilated torso of what only four years previously had been a prosperous empire.

The fate which now overtook Austria was without precedent. The worst horror of those days was not the stormy happenings all around and the starvation, but the utterly catastrophic reversal of every aspect of life, and the disappearance of Austria's proud position. An Austrian nocturno had begun, the privileges of centuries had been extinguished.

*May 29th, 1933. Institution of the 1000 mark limit for German tourists in Austria.*

*September 7th to 12th, 1933. Ninth "Catholic Day" in Vienna. Programmatic speech of Dollfuss.*

*February 5th, 1934. The League of Nations to be asked to intervene in the struggle with Germany.*

*February 9th, 1934. The parliamentary deputy Kunschak appeals in the Vienna City Council for reconciliation between "Black" (Catholics) and "Red" (Socialists).*

*February 12th to 15th, 1934. House searches in buildings of the Social-Democratic Party in Linz meet with armed resistance. General strike, violent conflict in Vienna and the countryside. The Vienna City Hall occupied by troops. Dissolution of the Social-Democratic Party. Arrests of leading Social-Democrats.*

*April 30th, 1934. Parliamentary Session of March 4th, 1933 closed. Enabling Bill passed to authorise the Government to conduct the affairs of state.*

*May 1st, 1934. Publication of the new Constitution of the Corporate State.*

*May 20th, 1934. First Nazi bomb outrage.*

*July 25th, 1934. Murder of Chancellor Dollfuss by illegal S.S.*

*July 25th to 30th, 1934. Nazi revolt in Carinthia and Styria suppressed.*

*July 30th, 1934. Schuschnigg becomes Chancellor.*

*September 27th, 1934. Joint Declaration by England, France and Italy, guarantees the independence of Austria.*

*January 7th, 1935. Laval in Rome. Consultative pact between Italy and France for defence of Austrian independence.*

*May 1st, 1935. The "Vaterländische Front" given monopoly rights to hold political meetings.*

If there were any need to emphasize or to 178
prove the indestructibility of the conception of
Austria, events subsequent to 1918 might be 565
called as witnesses before the bar of history. With quiet determination, the Austrians pulled themselves together and prepared to tread the stony path towards the formation of a new state. Now the call came to the simple citizens, the peasants, the city workers. The privileges of a class who for the last ten years had meant no more to the various peoples of Austria than a loose bond forged by tradition and official position were swept away in the general collapse of 1918. The blackballing of socially ineligible candidates for membership of exclusive clubs and the privilege of having green shutters to the house windows—documented evidence of membership of a privileged class—together with the old uniforms and the titles of nobility became just a part of historic memories.

The Austrian people know by instinct how 181
to determine what is part of a precious heritage from the past and what is merely outworn convention. This instinct has constantly enabled them to adjust themselves to new modes of life during the ups and downs of the centuries. The Austrian has the gift of human comprehension, a readiness to respect opinions diametrically opposed to his own. Averse from the use of force and revolted by unnecessary violence, he cherishes freedom and hates tyranny. The Austrian has no respect for an empty skull, even if it is covered by a top hat or the brass hat of a general. But he is capable of deep reverence for every person and every thing really worthy of it.

Austria's path which led from the First to the 642
Second Republic was a painful and difficult one. She was no more free from errors and mistakes in home policy than from reverses

642 coming from abroad, for Europe as a whole had not yet found peace. The shadows of great crises fell athwart the land in the middle twenties at a time when it enjoyed only a makeshift financial stability and consolidation. Now came the stagnation of world trade, and the birth of the dictatorships. The internal political events can only be partly understood if considered in conjunction with events in the outside world.

648 Austria is the barometer of Europe. Lying on the Rome—Berlin axis, partly surrounded by the semi-circle of the lands of the Little Entente, with eyes hopefully turned towards the peace policy of the League of Nations, this country found itself amidst ideological material forces which only too soon began to extend their activities beyond their own frontiers, until opposing policies in this small and tortured country put an end to civil peace. A factor to be remembered is that men without employment were marching in all the various armed formations—Schutzbund, Heimwehr and Storm Troopers. Despite lack of unity, Austria still found the strength to resist the aggression of the Third Reich until the invading troops of Hitler trampled—for the time being—Austria's freedom into the dust.

During the years of 1938 to 1945 there arose and spread through Austria a valuable quality, the will to tolerance and cooperation when the Motherland should at last be liberated.

*April 11th, 1935. Schuschnigg orders disarmament of the Catholic militant formations.*

*May 4th, 1936. Compulsory military service in Austria.*

*June 11th, 1936. Germany recognises by treaty the full sovereignty of Austria.*

*July 23rd, 1936. Political armistice for the Nazis.*

*October 10th, 1936. Disbanding of all private armies. End of the Heimwehr.*

*June 18th, 1937. National-Political Section set up in the Vaterländische Front. Infiltration of the Vaterländische Front by Nazis.*

*September 25th to 29th, 1937. Mussolini visits Hitler in Germany.*

*February 4th, 1938. Hitler purges the German General Staff.*

*February 12th, 1938. Schuschnigg visits Hitler at Berchtesgaden.*

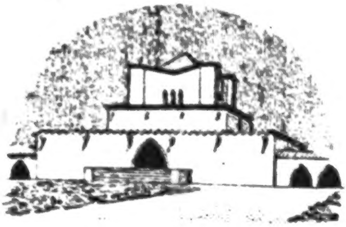
*February 24th, 1938. Campaign speech of Schuschnigg to the Federal Council at Vienna. Final struggle for Austria.*

*March 9th, 1938. Schuschnigg announces National Referendum.*

*March 11th, 1938. Ultimatum of the German Government. Fall of Schuschnigg.*

*March 12th, 1938. German troops invade Austria.*

*March 13th, 1938. Proclamation of the annexation of Austria by Germany.*



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the Heimwehr against Starhemberg's fascist tendencies. Inevitably, Raab and Starhemberg fell out. Raab left the *Heimwehr.* The communists call Raab a fascist, but that is stupid.

After Parliament was dispensed with under the Dollfuss-Schuschnigg regime, Raab won high repute as founder, organizer, and leader of the *Gewerbebund,* a nation-wide organization of all the trades, crafts, and industries. When Chancellor Schuschnigg made his last desperate attempt to stave off Hitler, he rallied the biggest names in the land around him. He made Raab minister of trade and transport.

After Hitler annexed his native Austria to the *Reich,* Raab was, of course, out in the wilderness. He was never personally persecuted, but he could not risk the family fortune by rejoining their old firm, and he started out on his own, in Vienna. So deep was nazi hatred towards Raab that at the outbreak of the 2nd World War he was formally declared unworthy of wearing a German uniform!

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The Russians entered Vienna in the spring of 1945. Marshal Tolbukhin ordered a provisional government in which the Catholics, Socialists, and communists had to share every ministry. Builder Raab became secretary of state in the ministry for reconstruction, but was vetoed by the Russians as a minister in Figl's cabinet.

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131 democratic neighbours, is therefore an essential condition
for checking Germany's "*Drang nach dem Osten*" in the
721 future. Indeed, if the Austrian state had not existed it
might have been necessary to invent it.

721 Fortunately, no such invention is needed. The events
which have taken place in Austria in the days of liberation,
642 and since, testify to the ardent desire of most Austrians to
rebuild their country on a firm, independent, and democratic
basis. Austrians from all sections of society took part
in the armed expulsion of the German occupationists.
The liberating armies in the east and in the west were
everywhere greeted with joy. For the first time in Austria's
history, there is a spirit of unity and common purpose
among all democratic Austrians. This has enabled them
to form in a surprisingly short space of time a truly
representative government, free trade unions, a progressive
youth movement, and other democratic bodies
which have made a bold start in rebuilding the shattered
[668] political and economic fabric. Remnants of Nazi cells
and of Nazi ideology have certainly survived and remain
to be dealt with. But there is no doubt that the vast
majority of Austrians have been cured of any illusions
they may have entertained about the necessity or desirability
of an *Anschluss*.

433 This is a very welcome fact. It is, indeed, an essential
condition of any democratic revival. But it is not, by
itself, sufficient. As the Moscow Declaration rightly indicates,
the creation of satisfactory economic conditions is
essential if stability and peace in that area are to be
secured. And it is on this score that some people, who
are otherwise entirely in favour of Austrian independence,
begin to raise their doubts. They remember the prolonged
controversies after the last war which centred on
this very point: whether the new Austrian Republic would

9: Rothschild E-4, 5 (no date) 1947 EK1 Austria EK1

648 The suspicions of 1918 against Austria as the centre of Habsburg power has given way to a feeling of common interest after the common experience of German oppression. Fourthly, the destruction of Germany's political and economic power will, for the first time, allow Austria to re-build and develop her economy freely and without the defeatist and destructive interference of German 727 business and its Pan-German friends in Austria. Last but not least, Austria's prospects of recuperation are 186 better than in 1918 because Austrians themselves have 642 changed. The experience of twenty years—not very easy ones, to be sure—of an independent Austria and of the subsequent catastrophe of seven years of German occupation have cured them of such *Anschluss* ideas as they may have had. They are firmly determined to have their own independent country and to maintain its independence. A healthy and constructive Austrian nationalism has developed in place of the defeatism and lack of confidence of the inter-war period. The active part which many Austrians took in the liberation of their country, and the speed with which Austrians of all parties came together and formed a Provisional Government of national unity is a hopeful sign for the future. Austrians have started to learn to take their fate into their own hands and not to rely solely on foreign help for their salvation. This change of outlook, if it can be preserved and fostered, cannot but greatly assist the reconstruction of the country.

GOO In spite of the extreme seriousness of the present position, then, the outlook for the transition period is quite hopeful. In the first stages a certain degree of foreign help for relief and rehabilitation is, of course, absolutely essential. But if it is given speedily, without the delays and political interference which were such an unfavourable feature of the Hoover Mission in 1919, and